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ABSTRACT

This is the second issue of a new journal designed to keep elementary and secondary school teachers and students up-to-date with developments in law-related education. The focus of this issue is on discipline and due process in the schools. One article discusses recent court cases concerning the rights of students versus the rights of school administrators in discipline cases involving corporal punishment. Another article reviews the disciplinary attitudes and practices of schoolteachers in the 19th century. Other articles suggest how to use court cases as case studies, explain how a day spent in small claims court can show students how judicial decisions are made in various areas of law, present annotated lists of instructional materials about juvenile law, and describe federal sources of funding for law-related curriculum development and teacher education. Two sections entitled Newsclips and Court Briefs contain short reports on topics such as changes in the federal copyright law, a newspaper course on crime and justice, capital punishment, obscenity, and school integration. (AV)

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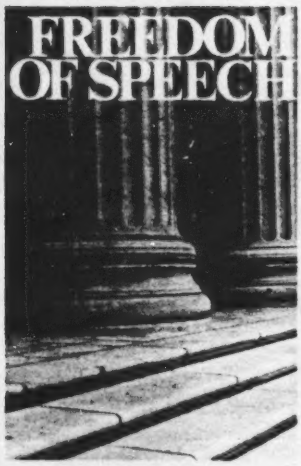

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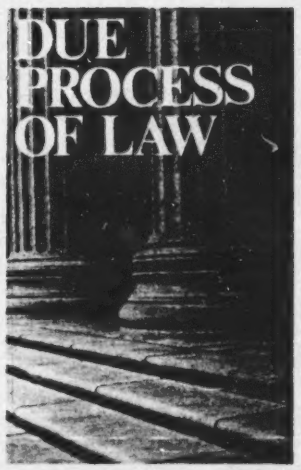

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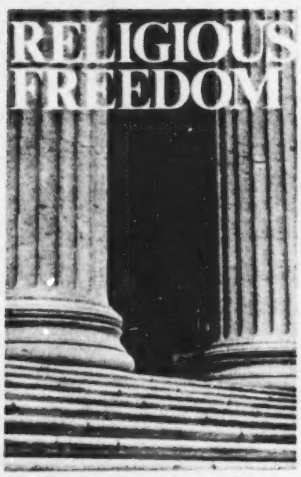

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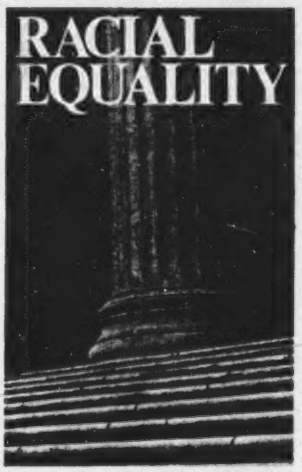

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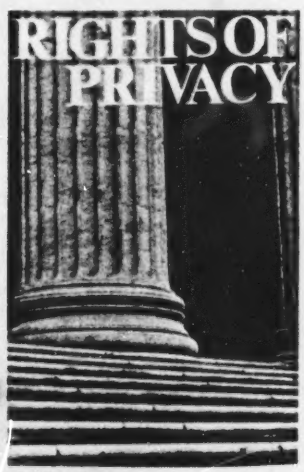

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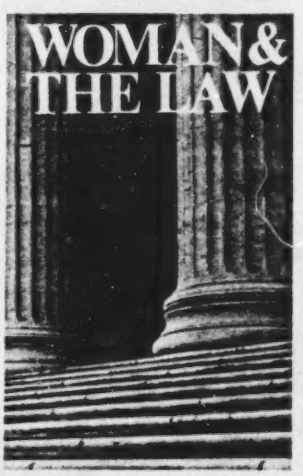

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OPENING STATEMENT

Over 4,000 cases filed, 176 arguments heard, and 136 tten opinions handed down on such issues as corporal and ital punishment, abortion, rights of the accused, cenity, integration, discrimination, and presidential ers. These facts and figures reflect the extremely full term ently concluded by the Supreme Court, and this, the ond issue of *Update*, reviews the substantive and educa- al import of these decisions.

The Court's controversial and greatly misunderstood ngs on school discipline are the topic of our lead article. article's authors not only place the decisions in context, suggest how you might use the decisions in the class- m. The landmark decision of *Tinker v. Des Moines Inde- dent School District*, perhaps the best known Court ision on school practices and policies, later serves as the l point for an examination of the case study method in a *Update* section on *Classroom Strategies*.

Throughout the issue, information is also provided regarding other Court decisions, curriculum materials, and resources which will aid you in teaching about school-related legal issues. Other highlights include suggestions by classroom teachers on instituting law-related education programs, reflections of co-editor Charles White as a result of his experiences in small claims court, new curriculum materials in the area of juvenile law, and a look at corporal punishment in the 1800's.

Finally, let me express our appreciation to the many of you who completed and mailed us the questionnaire included in the first issue (a summary of your responses appears in *Opinions: Concurring and Dissenting*). You will notice that we have already instituted a number of new sections and approaches. Many of them are a direct result of your recommendations. Please continue to share your ideas with us so that we may make *Update* as responsive as possible to your needs and interests.

—Norman Gross

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contents

Volume 1, Number 2 Fall 1977

4

Supreme Court Report
Discipline and Due Process in the Schools

7

Court Briefs
From License Plate Mottos to Nixon's Papers and Tapes

11

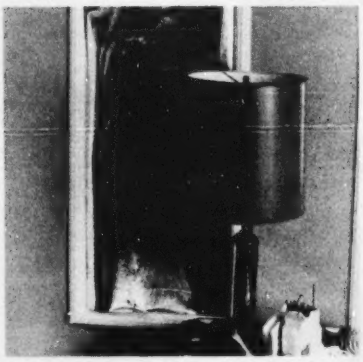
Classroom Strategies
The Case for the Case Study Approach

16

Update Looks Back
Spare the rod and. . .

18

In the Field
Why I Went to Small Claims Court



21

Newsclips

23

Curriculum Update
Focus on Juvenile Law

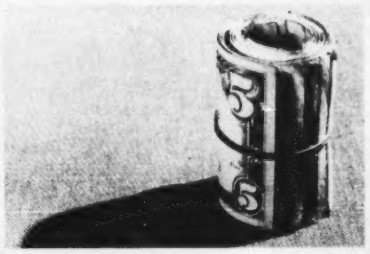
26

Family Lawyer
Cases on the Parent-Child Relationship

29

Interview
Getting Started

32



The $$ Game
How to Find Money for Your Program

47

Project News
New York Project Offers Help Across State

48

Opinions: Concurring & Dissenting

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Discipline and Due Process in the Schools

Few cases of the Supreme Court have been so widely reported and badly distorted as its decisions on corporal punishment and due process.

David Schimmel and Louis Fischer

An April 19 headline in *The New York Times* was typical of the way many newspapers incorrectly summarized the recent corporal punishment decision: "High Court Upholds Spanking in School Even if Excessive." A few days later, a syndicated columnist for the *Boston Globe* used more extreme language in commenting on the decision: "Last week the Supreme Court upheld child abuse." Neither of these descriptions accurately reflects what the Court said, but they did contribute to the popular myths and misunderstandings that surround this decision.

News reports of the 1975 landmark case on due process, *Goss v. Lopez*, fared no better. Two years after the decision, the *Newsweek* of January 10, 1977 incorrectly reported that "if the parents of only a fraction of suspended children were to demand due process hearings, the schools could fall into serious disarray."

Yet these decisions are of critical importance to teachers, administrators, parents, and students. They go to the heart of what we expect of our schools, what rights we provide and what obligations we demand of students, and what philosophy we hold about education. A closer look at these decisions, therefore, will not only help us dispel popular misconceptions nurtured by the media, but also provide us with the opportunity to explore the broader implications of the Court's rulings.

David Schimmel and Louis Fischer are lawyers and Professors of Education at the University of Massachusetts. They have written many books and articles on the rights of students, teachers, and parents.

The *Ingraham Case*: Corporal Punishment in Public Schools

This case began when James Ingraham and Roosevelt Andrews, 8th and 9th grade students in Miami, were paddled during the 1970-71 school year. Andrews was paddled for some minor infractions of the rules, Ingraham because he was slow to answer a teacher's questions. At the time of the paddling, many of the schools of Dade County used corporal punishment as one means of maintaining discipline. A Florida statute prohibited punishment that was "degrading or unduly severe" or which took place without prior consultation with the principal or the teacher in charge of the school. And the county school board policies even prescribed the dimensions of the wooden paddle to be used on students' "buttocks."

While the normal punishment was limited to one to five blows with the paddle, Ingraham received more than twenty, while being held over a table in the principal's office. The severity of the beating caused hematoma requiring medical attention, and he missed 11 days of school. The paddling Andrews received included being struck on his arms,

depriving him of the use of an arm for a week.

The students filed suit in the District Court against several school administrators, charging that the severe paddling they received in school constituted cruel and unusual punishment in violation of the Eighth Amendment, as well as a deprivation of liberty without due process of law in violation of the Fourteenth Amendment. The District Court, while assuming the accuracy of this evidence, ruled that the boys' constitutional rights were not violated. The Court of Appeals affirmed this judgment, and the students appealed their case to the Supreme Court in *Ingraham v. Wright*, 45 U.S.L.W. 4364 (April 19, 1977).

Is corporal punishment cruel and unusual? In order to answer this question the Court first examined "the way in which our tradition and our laws have responded to the use of corporal punishment in public schools." It accepted the common law rule that "teachers may impose reasonable but not excessive force to discipline the child." According to the Court, this is the prevalent rule today, and if "the force is excessive and unreasonable, the educator in virtually all states is subject to possible civil and criminal liability."

Forty-eight states authorize the use of corporal punishment today, 21 by statute and 27 by court preservation of the common law rule. Only New Jersey and Massachusetts have prohibited it in the public schools.

When is the punishment reasonable and when excessive? All the circumstances must be considered before this question can be answered, including the nature and "seriousness of the offense, the attitude and past behavior of the child, the nature and severity of the punishment, the age and strength of the child, and the availability of less severe but equally effective means of punishment."

After examining common law traditions, current state laws, and school practices, the Court considered the history of the Eighth Amendment and concluded that it does not apply to questions of discipline in public schools. The five-judge majority was satisfied that the original intent behind the Cruel and Unusual Punishment Clause was to control the punishment of criminals. Furthermore, Justice Powell asserted in the majority opinion, school children need no such protection because in addition to the possibility of civil and criminal suits which may be brought against those who exceed their authority, the very "openness of the public school and its supervision by the community afford significant safeguards against the kinds of abuse from which the Eighth Amendment protects the prisoner."

The Court next examined the question of whether due process must precede corporal punishment. The Fourteenth Amendment prohibits any state deprivation of life, liberty, or property without due process of law, and Powell acknowledged that corporal punishment falls under one of these protected categories. Punishing a student or inflicting appreciable physical pain implicates the 'liberty' interest protected by the Amendment, he said.

Granting that a protected interest is involved, the question still remained as to "What process is due?" To answer that question, the Court analyzed the individual interests involved, and the interests of the state in terms of the costs and burdens of additional safeguards.

As to the individual's interests, the Court argued that an ordinary paddling does not threaten any serious right, nor cause any grievous loss. The majority then argued that the requirement of additional procedural safeguards would add a significant burden without corresponding benefits.

According to the majority, due process prior to corporal punishment would require "time, personnel and the diversion of attention from normal school pursuits," and educators might well abandon the use of such punishment to avoid the burden of complying with procedural requirements. The question of whether or not to continue corporal punishment in the schools is for legislatures and school boards to decide,

"The infliction of pain is final and irreparable; it cannot be undone. . ." the minority argued.

they argued, and it should not be the by-product of a court decision.

Thus the majority acknowledged that the additional procedural safeguards might marginally reduce the risks of violating a student's rights, "but would also entail a significant intrusion into an area of primary educational responsibility." It therefore ruled that common law remedies will suffice and that the Due Process Clause does not require notice and a hearing prior to the administration of corporal punisment.

Four Justices Disagree

In a powerful dissenting opinion, Justice White, joined by Justices Brennan, Marshall, and Stevens, expressed his disagreement with the majority on both major issues: the applicability of the Cruel and Unusual Punishment Clause and the Due Process Clause.

White first considered the Eighth Amendment issue. An examination of the wording of the Amendment, as well as its history, led him to conclude that it was meant to apply to all punishment, not only to criminal cases. To illustrate this point, Justice White used an extreme example, often quoted by critics of the decision: "If it is constitutionally impermissible to cut off someone's ear for the commission of murder, it must be unconstitutional to cut off a child's ear for being late to class."

Justice White and his fellow dissenters were not satisfied that the "openness" of public schools is sufficient protection against excessive punishment. Furthermore, they were convinced that if a punishment is barbaric and inhumane, openness to the public and the availability of other remedies doesn't make it constitutional. White emphasized that he wasn't suggesting that corporal punishment in the public schools is always a violation of the Eighth Amendment. Rather, he took issue with the view that "corporal punishment in the public schools, no matter how barbaric, inhumane, or severe, is never limited by the Eighth Amendment."

Justice White and the other dissenters also argued the need for due process before corporal punishment. According to them, a key purpose of the due process provision is to protect an individual from erroneous or mistaken punishment that society would not have inflicted had the facts been examined in a more reliable way.

The majority was satisfied that a misuse of corporal punishment could be cured by a subsequent suit for damages, or by criminal action. The dissenters, however, contended that "the infliction of physical pain is final and irreparable; it cannot be undone in a subsequent proceeding." They also noted that state laws (including those of Florida) are often inadequate to help students wrongfully punished. Furthermore, they argued that the *Goss* case (discussed more fully below) provides for fairly simple due process requirements which would not be unduly burdensome and time-consuming to administer.

In short, the dissent argued that although ordinary corporal punishment does not violate a student's "liberty" interests, excessive or unreasonable punishment does and therefore is protected by the Cruel and Unusual Punishment Clause of the Eighth Amendment. Moreover, the dissenters would require at least some modicum of due process before the administering of any corporal punishment in public schools.

The *Goss* Case: Due Process in Public Schools

In 1975 the Supreme Court handed down another decision that was as important and as widely misunderstood as *Ingraham*. The case was *Goss v. Lopez* (419 U.S. 565) in which the Court required due process in all student suspension cases. Many educators interpreted this to mean that every student was now entitled to counsel, witnesses, cross-examination, appeals, and other judicial safeguards before being suspended. Some concluded that schools would have to give up suspensions or turn the classroom into a courtroom, and education into an adversary process.

The case began in 1971, when many students from the Columbus, Ohio schools were suspended without first receiving a hearing. Some were punished for documented acts of violence. Others, like Dwight Lopez, were suspended although they claimed to be innocent bystanders of demonstrations or disturbances, no evidence was presented against them, and they were never told what they were accused of doing. A group of students who were suspended for up to 10 days without a hearing claimed that this violated their right to due process of law. A federal court agreed, and the school administrators appealed to the U.S. Supreme Court. In a 5-4 opinion, the Court confronted a number of issues that are important to all students and teachers.

The majority first held that the Constitution protects students in cases of expulsion from public schools. On behalf of the Court, Justice White extended the holding of the *Tinker* case (see pp. 11-15) when he wrote without qualification that "young people do not 'shed their constitutional rights' at the schoolhouse door." The Constitution may not require states to establish public schools; but once they do, students have a "property" right which may not be withdrawn on grounds of misconduct without "fundamentally fair procedures."

The majority opinion further held that the Due Process Clause applies to cases of short suspensions. A suspension for up to 10 days is not so minor a punishment that it may be imposed "in complete disregard of the Due Process Clause," Justice White wrote. "The total exclusion from the educational process for more than a trivial period is a serious event in the life of the suspended child." The students in this case were suspended based on charges of misconduct which, if recorded, could damage their standing with their teachers and "interfere with later opportunities for higher education and employment."

The majority then turned to the question of what process is due. The Court noted that due process is a flexible and practical concept—it does not require a rigid set of procedures to be applied in all situations. However, due process requires at least that no one should be deprived of life, liberty, or property without being informed of the charges against him and given an opportunity to be heard. "At the very minimum, therefore, students facing suspension . . . must be given *some* kind of notice and afforded *some* kind of hearing."

The Court then explained the kind of informal notice and hearing that is required in connection with a suspension of 10 days or less: "that the student is given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." Due process, concluded the Court, "requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary expulsion from school."

The Court recognized, however, that there are school emergencies in which prior notice and hearing would not be required, particularly when there are dangers to persons or property. In such cases, the Court only required that fair procedures be followed "as soon as practicable" after removal of the danger or disruption.

The Court did not directly address the issue of what procedures are required in cases of suspensions for more than 10 days or for expulsions. However, it has in prior cases often explained that due process is a flexible concept which must

(Continued on page 34)

Case Citations

Throughout *Update*, citations such as 545 F. 2d 30 (1976) appear so that you can, if you wish, read an entire decision and also learn of other cases and resources on the topic. For those of you who are unfamiliar with such citations, here is a brief explanation.

The first number (545) refers to the volume in which the case appears; the abbreviation which follows (F. 2d) indicates which reporter system to go to—in this instance the Federal Reporter, Second Series; the next number (30) tells you the page number; and the date of the decision (1976) is the last piece of information.

Citations for decisions of other federal as well as state courts use the same format, the only difference being the reporter system in which the case appears.

Of course, a law school library is often the best place to research a case, but most bar associations, county or city governments, and law firms have at least the Supreme Court reporters. Establishing contacts with law librarians, practicing attorneys, and others who have ready access to such resources can thus be especially valuable for you and your students.

From License Plate Mottos to Nixon's Papers and Tapes

Norman Gross

As noted in the *Opening Statement*, the Court's recently completed term was both full and comprehensive. Particularly during the last several months of the term, many of the more controversial decisions—on capital punishment, abortion, obscenity, and school integration, to name a few—were handed down. This issue's *Court Briefs* summarizes those rulings and the reasoning behind them.

Two new features also appear in this section. *Other Decisions of Note* (pp. 40-41) provides capsule summaries of additional important recent cases of the Court, and *On the Docket* (p. 43) alerts you to cases the Court will be deciding during the coming term.

Live Free or Die

George and Maxine Maynard, both Jehovah's Witnesses, considered the New Hampshire license plate motto "Live Free or Die" to be repugnant to their moral, religious, and political beliefs. In an act which might be regarded as an affirmation of the motto's message, they covered this part of their license plates in order to avoid becoming advertisers of the slogan.

New Hampshire law, however, made it a misdemeanor to knowingly obscure the figures, letters, or motto on the plates. As a result, Mr. Maynard was on several occasions convicted and fined for violating the law. Upon his refusal to pay the fines, he was sentenced to and served fifteen days in jail. Upon his release, however, he sought an injunction against further arrests and prosecutions. The district court granted his request and the state appealed to the Supreme Court.

In the case of *Wooley v. Maynard*, 45 U.S.L.W. 4379 (April 20, 1977) the Court by a seven to two margin supported Maynard's First Amendment claims. "The right to freedom of thought protected by the First Amendment against state action," wrote Chief Justice Burger on behalf of the majority, "includes both the right to speak freely and the right to refrain from speaking at all." The Court determined that two interests advanced by the state in support of the law—making it easier to identify passenger vehicles and promoting appreciation of the state's history, individualism, and pride—were insufficient. The plates are readily distinguishable without the motto, Burger observed, and the state's interest in communicating an official view cannot outweigh an individual's First Amendment right to avoid becoming a courier for the message.

License plates cannot be used as 'mobile billboards' for the state's ideological message

"The New Hampshire statute in effect requires that [the Maynards] use their private property as a 'mobile billboard' for the state's ideological message—or suffer a penalty, as Maynard already has," Burger emphasized. The law, he concluded, is therefore constitutionally invalid.

Justices Rehnquist and Blackmun disagreed. The Maynards "have not been forced to affirm or reject the motto," Rehnquist argued. Everyone knows that the motto is a required part of the state's license plates and no one would consider the Maynards as advocates of the motto simply because it appears on their plates.

Rehnquist also contended that the case didn't even involve "speech." The Maynards could have displayed their disagreement through bumper stickers, Rehnquist noted. Finally, Rehnquist raised questions about the consequences of the decision. "Does this mean that atheists can constantly deface the 'In God We Trust' motto on U.S. currency in violation of federal law proscribing such conduct?" he asked.

For Sale or Not for Sale

Is a town acting in violation of the First Amendment's freedom of speech guarantee when it prohibits the posting of "For Sale" or "Sold" signs in order to stem what it perceives as white flight from a racially integrated community? A unanimous Court (Justice Rehnquist not participating) held such action unconstitutional in the case of *Linmark Associates v. Township of Willingboro*, 45 U.S.L.W. 4441 (May 2, 1977).

Willingboro is a southern New Jersey town located near several military bases and national corporations. During the 1960's, the town grew rapidly. The white population increased from under 9,000 to about 39,000, and the non-white population rose from 60 to 5,000. From 1970 to 1973, however, growth slowed to 3%. More significantly, the white population declined by 5% and the non-white population increased by 60% during this period.

Norman Gross is both a lawyer and an educator. He is currently Staff Director of the ABA's Special Committee on Youth Education for Citizenship.

With this change, panic selling occurred. As one realtor explained, " ... the whole town was for sale and [people] didn't want to be caught in any bind." In order to reduce panic selling and promote a stable, integrated community, the town council enacted an ordinance which forbid posting of "For Sale" or "Sold" signs on all but model homes. A firm wishing to sell its property brought suit against the town asserting that the ordinance unconstitutionally restricted its freedom of speech.

Justice Marshall, writing for the Court, agreed with this contention. He first noted that serious questions exist as to whether the ordinance gave sellers effective alternative means of communication. The alternatives—newspaper ads and listings with realtors—are more costly, are less likely to reach persons not deliberately seeking sales information, and lack the effect of being in front of the property to be sold, Marshall pointed out. Moreover, the ban was not primarily concerned with the place or manner of the speech, but rather its primary effect—that it would cause those receiving the information to act upon it.

Marshall explained that although this case involves "commercial speech"—the courts have held that speech serving commercial purposes is less deserving of First Amendment protection than speech concerning social and political ideas—this does not mean that the Court may "escape the task of assessing the First Amendment interest at stake and weighing it against the public interest allegedly served by the legislation." While recognizing the importance of promoting stable, racially integrated housing, the Court emphasized that the First Amendment prevents governments from achieving this goal by restricting the free flow of truthful information. "If dissemination of this information can be restricted, then every locality in the country can suppress any facts that reflect poorly on the locality, so long as a plausible claim can be made that disclosure would cause the recipient of the information to act 'irrationally.' " The best means of dealing with the situation, Marshall emphasized, "is to open the channels of communication rather than to close them." People who were staying could put up "Not For Sale" signs, inducements to stay could be offered to those considering selling their homes, and the town could continue the process of education it had already begun, Marshall suggested.

Lawyers May Advertise

In recent years, advertising has become as American as motherhood and apple pie. Ours is a consumer-oriented society, and advertising is the best way to inform, entice, cajole, and ultimately convince the public of the need or value of a particular product, service, or idea.

Dating back to 1808, however, the legal profession has maintained that advertising would downgrade the profession by commercializing it, and, since the late 1800's, has banned lawyer advertising. In *Bates v. State Bar of*

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Arizona, 45 U.S.L.W. 4995 (June 27, 1977), a sharply divided Court ruled that such prohibitions violate lawyers' First Amendment rights to freedom of speech. The Court held that lawyers can advertise, but only the cost of such routine services as uncontested divorces and simple adoptions.

The case arose when the legal clinic of Bates and O'Steen placed a newspaper ad in the *Arizona Republic* which offered "legal services at very reasonable fees" and listed their fees for certain services. Since the ad clearly violated a Supreme Court of Arizona rule against lawyer advertising, Bates and O'Steen were given one-week suspensions from the practice of law. On appeal, the lower courts affirmed their suspension.

Writing on behalf of the five-judge majority, Justice Blackmun declared that the ban "serves to inhibit the free flow of commercial information and to keep the public in ignorance," thereby violating the First Amendment freedom of speech guarantee. Blackmun was not persuaded by the state bar's arguments against lifting the ban—that it would commercialize the profession, stir up litigation, increase the cost of legal services, diminish the quality of service, be misleading, and create enforcement problems. He emphasized, however, that the ruling was limited to brief, factual statements regarding fees charged for specific, routine legal services. "Advertising that is false, deceptive or misleading is, of course, subject to restraint," Blackmun held. "It follows as well that there may be reasonable restrictions on the time, place and manner of advertising."

In one of three dissents, Justice Powell, joined by Justice Stewart, contended that the decision has weakened the power of the courts and the states to regulate the legal profession, and has vastly increased the potential for deception. Justice Rehnquist reiterated his dismay that the Court was extending the First Amendment to cover commercial speech—" . . . the First Amendment speech provision, long regarded by this Court as a sanctuary for expressions of public importance or intellectual interests, is demeaned by invocation to protect advertisements of goods and services"—and Chief Justice Burger concurred in Justice Powell's observation that "today's decision will effect profound changes in the practice of law."

While many agree that the decision will undoubtedly have a significant impact on the legal profession and the practice of law, few can predict what that impact will be. Moreover, there remains the question of whether lawyer advertising will be in the best interest of the public and our system of justice. We can anticipate, however, additional cases which will further define not only the parameters of lawyer advertising but also advertising for other professions such as medicine and architecture which do not now allow their members to advertise fees and services.

What Is Obscene?

Faced with the task of determining whether a film could be considered hardcore pornography, Justice Stewart in the 1964 case of *Jacobellis v. Ohio*, 378 U.S. 184, declared, " ... I know it when I see it, and the motion picture in this case is not that." While not particularly illuminating, perhaps no other judicial declaration more vividly underscores the difficulties confronting the Court whenever questions of obscenity arise. For example, what is "obscene"? Is obscenity ever protected under the First Amendment guarantees of speech and press? And if so, what types of obscenity, under what circumstances, and by whose standard?

". . . I know it when I see it, and the motion picture in this case is not that."

Recent obscenity cases provide little additional guidance in resolving these issues although they do indicate a clear division on the part of the current Court Justices toward judicial handling of obscenity cases. In each of the three cases recently decided by the Court—*Smith v. United States*, 45 U.S.L.W. 4495 (May 23, 1977), *Splawn v. California*, 45 U.S.L.W. 4574 (June 6, 1977), and *Ward v. Illinois* 45 U.S.L.W. 4623 (June 9, 1977)—the Court handed down five to four decisions in which Justices Blackmun, Burger, Powell, Rehnquist, and White voted with the majority, and Justices Brennan, Marshall, Stevens, and Stewart cast dissenting votes.

The facts of each case are as follows: In *Smith v. U.S.*, Jerry Lee Smith mailed a magazine and two films which depicted various sexual acts from Des Moines, Iowa to two southern Iowa communities, Mount Ayr and Guthrie Center, at the written request of postal inspectors using fictitious names. He was subsequently indicted and found guilty of violating federal law which prohibits transmitting obscene materials through the mails, even though his conduct did not violate the then existing state obscenity laws.

In the second case, *Splawn v. California*, the defendant challenged his conviction for selling an obscene film in violation of California law. Splawn contended that the instructions to the jury, which permitted them to consider the circumstances of the sale and distribution of the film in determining whether it was obscene, violated his First and Fourteenth Amendment rights to freedom of speech.

In *Ward v. Illinois*, Ward challenged an Illinois obscenity statute as unconstitutionally vague and also claimed that the publications in question—which dealt with sadomasochistic activities—were not obscene.

Among the many cases decided by the Supreme Court, two serve as recent landmarks in the area of obscenity. In *Roth v. United States*, 354 U.S. 476 (1957), the Court held that in order to declare a work obscene, it must be considered in its entirety, not merely on the basis of selected excerpts which might be considered obscene. Subsequently, the Court enlarged upon this definition in *Miller v. California*, 413 U.S. 15 (1973). Miller established a three-part test of (a) "whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, political, or scientific value." *Miller* constituted the prevailing standard as the Court considered this series of cases. While not overruling *Miller*, the Court offered some interpretations of the ruling which surprised many observers.

Speaking for the majority in *Smith*, Justice Blackmun declared that juries must determine what constitutes contemporary community standards even if such decisions may be contrary to community standards suggested in exist-

ing state law. "Contemporary community standards must be applied by juries in accordance with their own understanding of the tolerance of the average person in their community," Blackmun said.

In *Splawn*, Justice Rehnquist's majority opinion held that in determining whether a film is legally obscene, juries could consider the way it was promoted and distributed, even by persons other than the accused. Quoting the 1966 case of *Ginzburg v. United States*, 383 U.S. 470, Rehnquist declared, " ...the circumstances of presentation and dissemination of material are equally relevant to determining whether social importance claimed for material in the courtroom [is], in the circumstances, pretense or reality."

Finally, in *Ward*, Justice White justified Ward's conviction under an Illinois statute which did not specifically mention sado-masochism (see second part of *Miller* test discussed above), arguing that prior Illinois Supreme Court decisions provided ample notice for the accused.

Justice Brennan wrote very short dissents in each of the cases, declaring that the statutes involved were "clearly overbroad and unconstitutional" for reasons stated in his dissenting opinions in previous obscenity cases. The newest Supreme Court Justice, John Paul Stevens, wrote more detailed dissents in each case, one of which (in the *Smith* case) a commentator described as "the most thoughtful opinion heard recently on the subject of controlling obscenity."

In *Smith*, Stevens first called for a reexamination of the premises of court guidelines in this area: " ... the diversity within the nation which makes a single standard of offensiveness impossible to identify is also present within each of the so-called local communities.... Indeed, in some ways, the community concept is even more objectionable than a national standard." He also noted the problems in having jurors determine what offends community standards. "The average juror may well have one reaction to sexually oriented materials in a completely private setting and an entirely different reaction in a social context," Stevens said. "The guilt or innocence of a criminal defendant in an obscenity trial is [thus] determined primarily by individual jurors' subjective reactions ... rather than by the predictable application of rules of law. In the end," he concluded, "I believe we must rely on the capacity of the free marketplace of ideas to distinguish that which is useful or beautiful from that which is ugly or worthless."

Stevens offered further insight into his position in *Splawn* and *Ward*. Noting that Splawn could have been found guilty because of the film's promotion rather than its content, Stevens said, "Truthful statements which are neither misleading nor offensive are protected by the First Amendment even though made for a commercial purpose ...The statements did make it clear that the films were 'sexually provocative,' but that is hardly a confession that they were obscene." Only such an accurate description, Stevens noted, "can enable a potential viewer to decide whether or not he wants to see them.... I would not send Mr. Splawn to jail for telling the truth about his shabby business."

Finally, in the *Ward* case, Stevens noted that while many state courts had responded to the specificity requirement of *Miller*, others, like Illinois, "did little more than pay lip service" to it. "One of the strongest arguments against regulating obscenity through criminal law," Stevens argued, "is the inherent vagueness of the obscenity concept" which the Court now fosters.

While many people may agree with Stevens' last statement, it is clear that these recent rulings can only strengthen governmental enforcement efforts in the obscenity area. It is equally certain that we can anticipate the debate about obscenity—in and out of the courtroom —to increase also.

Moral Blight or Constitutional Right?

Search of International Mail O.K.'d

A long-standing exception to the Fourth Amendment's probable cause and warrant requirements concerns so-called border searches. Since the earliest years of our nation, customs and other governmental officials have had the right to examine persons and property crossing into the United States when they have reason to suspect such passage may involve a violation of our laws. In *United States v. Ramsey*, 45 U.S.L.W. 4577 (June 7, 1977), the Court was faced with the issue of whether the border search exception includes the inspection of incoming international mail. By a six to three margin, they held that it did.

The case involved inspector George Kallnischkies, a U.S. customs officer in New York City, who spotted eight bulky envelopes in a sack of mail from Thailand. Knowing that Thailand is often a source of narcotics, that the envelopes were three to six times heavier than the normal air mail letter, and that something other than paper was inside, Kallnischkies opened the envelopes and

(Continued on page 38)

The Case for the Case Study Approach

Isidore Starr

Things haven't changed much since Alexis de Tocqueville wrote, "Scarcely any political question arises in the United States which is not resolved, sooner or later, into a judicial question."

Even as early as the mid 1800's, de Toqueville was able to observe one of the most salient characteristics of the American people, our habit of "constitutionalizing" our conflicts, of resolving them through judicial interpretation of the Constitution. With the passage of time, de Toqueville's observation has become truer than ever. Every great issue of our time, from A (abortion) to Z (zoning), comes before our courts, and landmark cases often offer an illuminating picture of the clash of values and the resolution of difficult issues.

Important case decisions are readily accessible (see box on pp. 14-15) and can easily be adapted to excellent classroom exercises, since the opinions contain everything you need to present an issue fully. Case studies also offer an introduction to ways of thinking. To observe well-trained minds grappling with some of the perplexing issues of the day can be an object lesson in decision-making and conflict resolution.

Below is a case that may well be of special interest to teachers and students, *Tinker v. Des Moines Independent Community School District,* 399 U.S. 503 (1969). In recent years the Supreme Court has entered the schoolhouse to decide matters of concern to school officials and to students and their parents. Among these confrontations are the issues of corporal punishment, the subject of the major article in this issue, suspension and expulsion of students, and freedom of expression. *Tinker* is the most important ruling of the Court in this latter area.

The Facts

A good way to begin is by presenting students the facts of the case. The facts are sometimes set forth clearly in the text of the Court's ruling and can be reproduced easily. More often, however, the instructor will have to edit the facts to meet the maturity level and the reading skills of the students. The following statement of facts is an edited version and includes the facts as presented in the majority and dissenting opinions.

In December, 1965, a group of adults and students decided to publicize their opposition to the Vietnam conflict by wearing black armbands during the holiday season and by fasting December 16 and New Year's Eve. Several of the students present had engaged in similar activities in the past, and they decided to participate in this activity.

The principals of the Des Moines schools heard about the plan and, on December 14, adopted a policy that forbade the wearing of an armband to school. Students who refused to remove such armbands would be suspended until they complied.

On December 16, several students who knew about the regulation wore armbands to school: Paul Tinker, 8 years old and in the second grade, Hope Tinker, 11 years old and in the fifth grade, Mary Beth Tinker, 13 years old and in junior high school, and Christopher Eckhardt, a 16-year old high school student. The following day, John Tinker, a 15-year old high school student, wore his armband to school.

The students were suspended and were told not to return to school unless they removed their armbands. They stayed away from school until after New Year's Day, when the planned period for wearing the armbands had expired.

Several incidents took place on the day the students wore their bands. There were comments and warnings by other students, some poking fun at them, and an older football player warned other students they had better let the protestors alone. A math teacher had his lesson practically "wrecked" by disputes with Beth Tinker.

The suspended students, through their fathers, filed a complaint with the United States District Court, asking for

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Fortas: "State-operated schools may not be enclaves of totalitarianism."

an injunction ordering the school officials not to punish them. In addition, they sought nominal damages—a small or token sum of money, usually $1.00, to show that legal injury has been suffered.

The Issues

With the facts in the hands of the students, the next step is to ask them to identify the basic issues as perceived by the opposing parties. One way to do this is to organize the students into small groups in which they place themselves in the position of the students or the school administrators.

In this case, the facts suggest a wide variety of issues. Students new to law studies and the case study method will probably perceive these issues in moral or practical terms: is it fair that students be deprived of their opportunity to express their political opinion? Will wearing the armbands disrupt the learning process? What about the responsibility of the school to maintain order?

By examining the Constitution and Bill of Rights to determine which provisions are relevant, however, students can begin to translate these general concerns into legal/constitutional issues. Does the First and Fourteenth Amendment protection of free speech apply to students in the school? If it does, is wearing a black armband considered speech which is protected by these Amendments? Is the free speech protection absolute, or can it be limited in certain circumstances? If so, what are those circumstances, and do they apply here?

The Arguments

Once the issues have been identified, have the students convert these into persuasive arguments for presentation to the Court. This exercise should help students see new dimensions to the issues and gain further insight into how these issues can be framed under our Constitution. The following summary of the actual arguments may provide a model.

In a criminal case, proof is necessary beyond a reasonable doubt, but since this was a civil proceeding, the attorneys for the Tinker children only had to prove by a fair preponderance of the evidence that their side was right.

It was argued, in the first place, that the wearing of armbands was the equivalent of speech and was thus protected by the First and Fourteenth Amendments. The First Amendment prohibits Congress from abridging freedom of speech, and the Supreme Court has expanded this prohibition to states under the Due Process Clause of the Fourteenth Amendment ("No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ") by interpreting 'liberty' to encompass the fundamental rights guaranteed by the First Amendment.

The second line of argument was that the action of the school authorities was capricious, arbitrary, and unreasonable because it simply singled out one form of expression—the black armband—rather than prohibiting the wearing of all controversial insignia. Furthermore, the administrators had permitted the wearing of political campaign buttons, and even the Iron Cross, in the schools.

The action of the school authorities would have been understandable if they could show that trouble might ensue in the school. However, the school system did not have a history of disruptions and, in any event, a few armbands in a school system of 18,000 students, the plaintiffs argued, did not warrant the action of the school administrators.

The attorneys for the School District responded with equally effective arguments. Amendment X of the Constitution vests the states with power over the educational system. Acting in the name of the state and with the powers vested in them, school authorities have the responsibility to take measures to protect the health, welfare, and safety of the students under their supervision.

The school regulation against black armbands was necessary to preserve discipline in the school. The Vietnam War was a divisive conflict marked by public protest meetings, draft card burnings, and a march on Washington. A former student of one of the high schools had been killed in Vietnam and some of his friends might have reacted strongly to the wearers of armbands. Students at one of the schools had been heard to say that if black armbands were permitted, they would wear armbands of another color. The situation seemed rife with rumors of trouble and the school administrators were best qualified to judge the situation. The regulation against the black armbands had been necessary to maintain discipline in the school and to prevent any interference with learning.

The Decision

The United States District Court, the lowest federal court, dismissed the complaint and ruled in favor of the school authorities. The case was carried to the United States Court of Appeals, where the judges were divided equally on the issue. This meant that the lower court decision was affirmed. The plaintiffs then carried their case to the Supreme Court of the United States. The decision was 7 to 2. For whom?

Black: "The beginning of a new revolutionary era of permissiveness"

At this point the students can be told how the case was decided, but this means that they will know the answer without additional thinking. To continue the suspense, present the class with excerpts from the majority and dissenting opinions, without identifying which they are. Students then have the opportunity to choose the line of reasoning which appeals to their minds or feelings. This gives the instructor an opportunity to examine with students cogency of reasoning, tangential commentary, the nature of judicial decision-making, and the personal philosophies and emotional reactions of the judges.

The Opinions

Justice Fortas wrote the opinion for the majority. The following excerpts indicate how he approached the issues.

. . . the wearing of armbands in the circumstances of this case . . . was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment . . . First Amendment rights, in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakeable holding of this Court for almost 50 years .

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.

. . . Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained . . . the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students. . . . Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.

Justices Stewart and White wrote concurring opinions. Justice Stewart did not agree that the First Amendment rights to students are "coextensive" with those of adults, but he nonetheless supported the majority decision. Justice White also supported the majority but pointed out that there is still a distinction "between communicating by words and communicating by acts or conduct." Exposing students to concurring opinions such as these can suggest new perspectives on the majority opinion and open up new topics for discussion.

Justice Black's sweeping dissenting opinion was surprising to those who associated him with some of the landmark freedom of expression rulings of the past. The following excerpts convey the flavor of his thoughts and feelings on the subject of school discipline.

While I have always believed that under the First and Fourteenth Amendment neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases . . . Nor does a person carry with him into the United States Senate or House, or into the Supreme Court, or any other court, a complete constitutional right to go into those places contrary to their rules and speak his mind on any subject he pleases. It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases.

(And) if the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools, can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary.

. . . The original idea of schools, which I do not believe is yet abandoned as worthless or out of date, was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders . . . One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders . . .

This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaded that school pupils are wise enough, even with this Court's expert help from Washington, to run the 23,300 public school systems in our 50 States. I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school

officials to surrender control of the American public school system to public school students. I dissent.

Justice Harlan also dissented. His argument was based on the proposition that "school officials should be accorded the widest authority in maintaining discipline and good order in their institutions." Therefore, in cases of this type the burden of proof rests on the complainants to show that the board's action was motivated by other than "legitimate school concerns." There was no proof here that the school officials intended to prohibit the expression of an unpopular point of view, while at the same time permitting the expression of the majority opinion.

Critique

The *Tinker* case is the law of the land, but that does not mean that it is above criticism. The case study method should include an opportunity to criticize the opinions of the Court on the measuring rod of desirable public policy. This stage allows students to take the concerns that they discovered in the issues and arguments phase and apply them to the actual decision.

Students should be encouraged to react freely to the interplay of the Fortas-Black confrontation. For example, Justices Fortas and Black express very different conceptions of education. Which one's views are more desirable for turning out good citizens? Is Fortas's opinion realistic and desirable, or will it place burdens on school administrators? Does Black's opinion reflect what is truly going on in schools? What consequences would it have for teaching and learning?

Application

An essential part of the case study method is speculating on how a constitutional principle would be applied in other cases. Other fact situations permit students to deepen their understanding of the issues and more closely analyze the conflicting values. How would they decide them in the light of the Court's general standard, established in *Tinker,* that school officials can restrict freedom of speech only if they can reasonably predict that the speech will materially and substantially disrupt discipline in the school. Consider the following:

Case I. A student named Guzick came to his high school wearing a button announcing a Vietnam moratorium demonstration and carrying pamphlets urging students to participate in that event. The school has a rule, oral but not written, against the wearing of insignia not related to school activities. This forty-year-old rule had resulted from rivalries of fraternities and sororities. The principal ordered Guzick to remove the button. He refused and was suspended. The school had once been all-white, but it was now 30% white and 70% black. Racial tensions had been evoked in the past by the wearing of such buttons as "White is Right," "Black Power," and "Happy Easter, Dr. King." On a number of occasions, fights had occured. Does the *Tinker* case rule apply here? What are the similarities and differences between the two cases?

Case II. Dallas school authorities knew that some students in the schools would wear black armbands to show their opposition to the war in Vietnam during the Vietnam Moratorium on October 15, 1969. Anticipating disruptions in the schools, the superintendent of schools prohibited the wearing of black armbands on that day. A number of students wearing such armbands were suspended. Those who wore white armbands were not suspended. On previous occasions students had worn peace symbols and had not been punished. Does the Tinker rule apply here? What differences and similarities do you see?

Case III. Charles James, an English teacher in the eleventh grade of an upstate New York high school, wore a black armband to class on November 14, 1969 to show his sympathy with the Vietnam Moratorium. When his principal asked him to remove it, he refused, stating that as a Quaker, he was opposed to killing. James was suspended on the ground that his act was political and his conduct was unethical. James was later reinstated, but after once again wearing the armband, was eventually fired. Upon losing an appeal to the state

Materials on the Bill of Rights

Many excellent materials provide you with information on important cases which have arisen under the Bill of Rights. In addition to those listed below, you will find information on cases in this month's *Curriculum Update* (pp. 23-25), and the boxes on pp. 30-31.

Print

Isidore Starr, *The Supreme Court and Contemporary Issues* (1969). This paperback discusses Supreme Court decisions through excerpts from important cases, providing case backgrounds and decisions, and noting the significance of decisions. The book costs $4.00. Order from Encyclopedia Britannica Educational Corporation, Customer Service, 10th floor, 425 N. Michigan, Chicago, Ill. 60611.

William Cohen, Murray Schwartz, and DeAnne Sobul, *The Bill of Rights, A Source Book* (1976). This paperback source book on constitutional law covers judicial review, freedom of religion, criminal due process, equal protection of the law, the Fourteenth Amendment and federalism. The cost is $4.96, $4.40 for the teacher's handbook; schools get a 25% discount on both books. Address orders to Glencoe Publishing Co., Front and Brown Sts., Riverside, N.J. 08075.

Donald Parker, Robert and Karen O'Neil, and Nicholas Econopouly, *Civil Liberties Today: Case Studies and the Law* (1974). This paperback presents the legal bases for the rights of the accused, equal opportunity under law, property rights, and freedom of religion, speech, press, and assembly. The cost is $4.32, $3.24 for school people. Address orders to Houghton Mifflin Co., Dept. M, One Beacon Street, Boston, Mass. 02107.

Franklyn S. Haiman (ed.), *To Protect These Rights* (1976). This series of books, published in conjunction with the American Civil Liberties Union, includes six books: *Due Process of Law, Freedom of Speech, Racial Equality, Religious Freedom, Rights of Privacy,* and *Woman and the Law.* Each book includes discussions of and excerpts from dozens of cases which show the evolution of constitutionally protected rights. Each book costs $5.75, $4.31 in classroom sets; the complete series is available for $29.50. Address orders to National Textbook Co., 8259 Niles Center Road, Skokie, Ill. 60076.

commissioner of education, he sued to be reinstated in his job, asking for $25,000 in damages. Would the *Tinker* rule apply here?

Here's what each court decided:

Case I. In *Guzick v. Debrus*, 431 F. 2d 594 (1970), the United States Court of Appeals upheld the school authorities. The existence of a long-standing rule against the wearing of non-school related buttons or insignia, the racial composition of the school, the atmosphere of tension, and the racial confrontations of the past justified the actions of the school officials. As for the issue of freedom of expression, the Court said that "America's classrooms will lose their usefulness as places in which to educate our young people if pupils come to school wearing the badges of their respective disagreements and provoke confrontations with their fellows and their teachers." The Supreme Court refused to review this case, letting the decision stand against Guzick.

Case II. In *Butts v. Dallas Independent School District*, 436 F. 2d 728 (1971), the United States Court of Appeals overruled the trial court's decision in favor of the school authorities. The appeals court concluded that the regulation "was improvised . . . for the occasion." Although disruption was a possibility, this did not justify suspending "the exercise of what we are taught by *Tinker* is a consitutional right." In the words of the court, " . . . we believe that the Supreme Court has declared a constitutional right which school authorities must nurture and protect, not extinguish, unless they find the circumstances allow them no practical alternative."

Case III. James lost in the United States District Court, but won in the United States Court of Appeals. *James v. Board of Education*, 461 F. 2d 566 (1972). The District Court decided that James had ignored the New York State Education Department ruling relating to neutrality and objectivity in presenting controversial issues, such as the Vietnam Moratorium. The Appeals Court, however, decided unanimously in favor of James on the basis of the *Tinker* case. They concluded that James had exercised his right to freedom of speech—symbolic speech—in a school atmosphere where there had been no disruptions. The court pointed out that school officials had permitted other signs such as "Peace with Honor," indicating that the school board's regulation against political activity in the classroom may be no more than "the fulcrum to censor only that expression with which it disagrees." The Supreme Court refused to review, thus upholding the decision in favor of James.

Alternative Approaches

There are, of course, other approaches to the case study method. An entire case, properly edited for maturity level and reading skills, can be distributed with instructions that the students discover the facts, arguments, issues, and the opinion or opinions of the judges. An alternative method is to assign to small groups the task of dissecting the case.

On a more sophisticated level, where there are majority and dissenting opinions, the students can be presented with two sets of facts drawn from the opinions. Their assignment is to note the differences in tone and detail of the statements. Then, two sets of opinions are handed out, without disclosing which are the majority and dissenting opinions. The assignment at this point is to match the facts with the opinions.

Films and film strips can be easily used in the case study format. Stopping the media at the proper point to examine the facts and the issues sets the stage for evoking the opposing arguments from the students before resuming the film. Even better, students can be asked to role play appropriate parties to the case and even to act as judge and jurors prior to the disclosure of the decision.

Creative intelligence and imagination can do wonders with the case study method. It adds a dimension to learning, provided the instructor does not fall into the routine of presenting "one damned case after another." Rigid routines can be the bane of a student's life in the classroom—and a teacher's, too. □

Milton R. Konvitz (ed.), *Bill of Rights Reader: Leading Constitutional Cases* (5th rev. ed., 1973). This compendium of important Bill of Rights cases is another good teacher resource. It contains explanatory essays and excerpts from trials and decisions. The cost is $19.50; address orders to Cornell University Press, 124 Roberts Place, Ithaca, N.Y. 14850.

Films

Our Living Bill of Rights Series (1967-69). This series of six color, sound 16mm. films, some with teacher's guides, explores basic Bill of Rights concepts by recreating actual cases and incidents and exploring the various issues presented. The films, which often include individuals who were actually involved in the cases, are open-ended and are designed to encourage discussion. They vary in length from 20 to 35 minutes. The first figure following the title indicates their purchase price, the second the short-time rental fee. *Freedom to Speak: People of New York v. Irving Feiner* ($325, $17); *Justice Under Law: The Gideon Case* ($290, $17); *Free Press v. Fair Trial by Jury: The Sheppard Case* ($360,$21); *Equality Under Law: The California Fair Housing Cases* ($255, $14); *Equality Under Law: The Lost Generation of Prince Edward County* ($245, $14); *Liberty Under Law—the Schempp Case: Bible Reading in Public Schools* ($460, $24). The films may be ordered from Encyclopaedia Britannica Films, 425 N. Michigan, Chicago, Ill. 60611.

Bill of Rights in Action (1969-1976). This series of twelve color, sound 16mm. films, each about 20 minutes long, explores key Bill of Rights issues. In each case, the incident is presented and arguments on each side made. The judgment is left to the audience. The first figure following the film's title is its sale price, the second its rental fee. *Capital Punishment* ($315, $25); *De Facto Segregation* ($320, $18); *Equal Opportunity* ($295, $18); *Freedom of the Press* ($310, $18); *Freedom of Religion* ($285, $18); *Freedom of Speech* ($285, $18); *Juvenile Law* ($335, $22); *Privilege Against Self-Incrimination* ($335, $18); *Trial* ($295, $18); *Women's Rights* ($330, $22); *Due Process of Law* ($325, $18). Order from BFA Educational Media, 2211 Michigan Avenue, P.O. Box 1795, Santa Monica, Calif. 90406.

Spare the rod and . . .

In the nineteenth century, students toed the line—or else.

Cynthia A. Kelly

"We observe with pain an increasing spirit of insubordination in some of our schools, cherished, as we believe, by many parents who advocate the doctrine that corporal punishment ought to be totally discarded."

Does this sound like something from an editorial you read recently? It might have been written last week, but it was actually part of an 1836 report by the Massachusetts Teachers Association. The debate about using corporal punishment in schools is clearly nothing new.

In colonial times and the early 1800's, corporal punishment was widely accepted. Flogging was a standard practice under the civil law of Egypt, Rome, and England, and was also countenanced by certain religious sects. In the United States, corporal punishment was common in military discipline.

In schools, corporal punishment was the cornerstone of discipline. Scenes such as the following were typical:

A new teacher seized a long rod by both ends, and lifting it high over his head, said fiercely, as his first words to his class: "Do you see that rod? Would you like to *feel* it? If you would, just break any of the 49 rules I'm going to read to you!"

Flogging became such a routine way of handling discipline problems that in one Massachusetts school (with 250 students) there were 328 floggings in one week, or an average of more than 65 each day.

What about a teacher who didn't want to strike students? One teacher was confronted with the problem on her first day, when another teacher recommended "sound and summary chastisement" of her students. She told her that she'd never struck a child in her life and didn't think she could do it. Her colleague told her "It is the only way and you must."

If teachers didn't get this kind of advice from coworkers, they would get it from teachers' manuals. One of them argued that corporal punishment should not "be regarded as a last resort. When it may be inflicted at all, it is the first resort and the true remedy."

The teacher who wouldn't administer corporal punishment was also likely to find himself unemployed. As one commentator warned in the 1850's, "no man can long satisfy the demand of the school, or satisfy the public around him, whatever else his qualifications may be, if he is not able to govern his school."

As these quotes suggest, school governance was most explicitly not democratic. One commentator wrote that the school should be run like "a monarchy—an absolute, unlimited monarchy, the teacher possessing exclusive power as far as the pupils are concerned." Or, as a teachers' manual put it, "when questions of authority are involved, the teacher must be as uncompromising as the Deacon who said to his neighbor with whom he had a dispute: 'I have prayed earnestly over this matter, and I have come to the conclusion that you must give in, for I cannot.'"

With the teacher in this position of unquestioned authority, there were bound to be abuses. The teacher who gave his

Cynthia A. Kelly is a lawyer who is now seeking her doctorate in education at Northwestern University. She is a former Assistant Staff Director of the ABA's Special Committee on Youth Education for Citizenship.

student the 49 rules could not remember his own list of rules, and as a result, adopted the policy of punishing students for anything he found irritating that day. This type of inconsistent and arbitrary punishment was unfortunately common.

By the mid-1800's, educational reformers who were appalled by the all too frequent instances of cruelty in the schools began to campaign against corporal punishment. Reformers like Horace Mann, Secretary of the Massachusetts Board of Education, proposed to limit the teacher's power to inflict such punishments.

As a result of pressure for reform, school committees in cities across the country passed regulations limiting the use of corporal punishment in schools. These regulations didn't outlaw corporal punishment, but rather set up guidelines designed to limit abuses. For example, a Brooklyn regulation in 1867 specified that "corporal punishment shall be resorted to only in cases of persistent misconduct, after failure of all other reasonable means of persuasion."

Sometimes teachers were forbidden to inflict corporal punishment and only the principal had that responsibility. In another approach to preventing abuses, school committees often required teachers to be able to justify every instance of corporal punishment. For example, an 1867 regulation for Manchester (New Hampshire) said that "teachers must keep a record of each case of corporal punishment, giving the name of every scholar so punished, the nature and extent of the offense, and the punishment inflicted, to be preserved for the inspection of the committee."

The extent to which attitudes shifted can be seen in an 1866 regulation in St. Louis, which suggested a fundamental change in the criteria used to evaluate teachers: "Those teachers who are most successful in controlling pupils without corporal punishment, other qualifications being equal, shall be awarded by the board a higher degree of appreciation, and retain a preference in promotions and appointments."

Teachers' manuals also reflected the changes in attitude and law by recommending that corporal punishment never be administered in anger or in front of other pupils, that an adult witness should be present, that the parents' consent be attained beforehand if possible, and that a record be made listing the offense, type of punishment, and the time and manner of its infliction.

One might have supposed that this reform would ultimately result in the abolition of corporal punishment. After all, a similar reform movement did result in the elimination of military floggings. In many schools, however, corporal punishment has remained, generally with safeguards like those promulgated 100 years ago. The reason seems to be that the "in loco parentis" status of schools has allowed educators to administer whatever punishments parents in that community might administer. Since adults in many communities apparently believe that parents have a duty to discipline children and that physical punishment is an acceptable and often necessary means of doing so, many school systems have retained corporal punishment. Apparently, only in localities where a majority of parents shared the same philosophy about child-rearing (i.e., physical punishment serves no useful purpose), could school boards be persuaded to prohibit corporal punishment.

Today, school discipline still ranks as a major concern of not only teachers and administrators, but increasingly of students who are victims of disruptive and violent acts in the school. The debates about the necessity of corporal punishment which raged in the middle of the last century thus continue to the present day, and we still seem very close to the position set forth in a treatise on school government written over 100 years ago: "This is corporal punishment. Now is this desirable, or admissible, or necessary? We answer that it is not desirable. But it is admissible and necessary in a system of school government." □

Why I Went to Small Claims Court

Our intrepid reporter handles his own case, sees justice triumph, and finds a good educational resource.

Charles White

Court is to convene at 9:30 in the morning, and at about 9:25 the courtroom begins to fill up with about as mixed a group as you're likely to find in a city like Chicago. It looks like a city bus has emptied into the courtroom. There are the young and old, men and women, blacks and whites, people dressed to kill (I later found out that these were the lawyers) and folks who look like they've slept in a clothes dryer. Among them are my wife and I, writers with no formal legal background who, like most of the people there, are representing ourselves. The name of the court is "pro se," a Latin phrase meaning "for oneself."

I'm a little nervous about our case—we're suing some ace wallpaper hangers whose paper began to peel off the walls three weeks after the job—but I've got plenty to occupy my mind until our case is called. Like how was the court going to maintain reasonable decorum given this menagerie, and how could it ever hear all these cases in one morning, to say nothing of resolving disputes fairly and serving justice?

All it cost to bring suit in Chicago's small claims court is $9.00 for filing and a few dollars to serve a summons on the other party. If one side doesn't show up, the other automatically wins.

The courtroom is small (room for no more than 50 people, the vast majority of whom are plaintiffs or defendants) and the scene is similar to what you might expect from watching Perry Mason: a judge in black robes, a clerk, two bailiffs, and a judge's bench. The resemblance ends there, though. There's no jury box, no witness stand, no reporters, and no formality. All the people involved in a case, including witnesses, come up to the bench together, are sworn in together, and then, standing side by side a few feet from the judge, have a chance to tell their stories. The judge questions them, gives them a chance to respond to what the other side said, and makes his decision. It takes no more than ten minutes for each trial.

In the first case one of the oldest men I've ever seen is suing someone only slightly younger than himself. It turns out that the "younger" man is a dentist who has made the older man's false teeth. The older man complains that the plates have hurt from the minute they were put in, that his bite is so bad that he can't eat many kinds of food, and that he's been unable to get satisfaction because the dentist went off on a three week vacation. He's suing to get his money back.

Then it's the defendant's turn. He says that he's adjusted the plates, and he's brought in his records which show how many times he's worked on the patient. He says that sometimes it's just hard for old people to adjust to something new. Then he pauses a little and says, "I think the real reason he's teed-off, judge, is that the wife and I didn't send him a postcard from our vacation."

Charles White holds a doctorate in American Civilization. He has taught at Northwestern University and Kendall College and is now Assistant Staff Director of the ABA's Special Committee on Youth Education for Citizenship.

The judge looks at the records, asks the old man if he's had some adjustments (he says he has, but the plates still "aren't up to standard"), and finally decides in favor of the dentist.

The next case involves one of the classic landlord/tenant hassles—a dispute over the security deposit. The plaintiffs are a nice looking young couple, so blond and clean-cut that they could have stepped out of a Wheaties ad. They've brought along their infant son, equally blond and good-looking. They look as though they've thought a lot about how to make a good appearance before the judge. (My wife and I exchange glances; maybe we should have gotten a prop from Rent-A-Kid.)

Their story is that they moved out of an apartment when their lease expired but never received their security deposit back, since their landlady claims that they left the apartment in such bad repair that she's been forced to use the whole deposit for fixing it up.

Their landlady is a rather severe middle-aged woman who's accompanied by a lawyer. (In this court, defendants can have lawyers but plaintiffs can't.) The other lawyers here are young, well coiffed, and generally pretty natty. This lawyer, though, is middle-aged and a little shabby.

He and the landlady base their defense on the lease. They say that the couple violated the lease by not giving a 90-day notice before vacating the premises, and by not getting permission in writing before keeping animals in the apartment. The landlady claims that the young couple's two cats caused all the damage, and that she hadn't known they had cats until she saw what a mess they'd left.

The judge doesn't buy this argument. He points out that tenants have to give notice only if they move out before the termination date of the lease. They have the right not to renew their lease and therefore are free to leave when it expires. He then asks the landlady and her lawyer if, within 30 days of the end of the lease, she had given the tenants notice in writing of the damages to the apartment and the cost to repair them. She says she hadn't, and he reads her a provision from a statute specifying that landlords can keep the security deposit for repairs only if they provide an itemized list of damages, within 30 days of the end of the lease. He rules that she'll have to return the deposit.

Her lawyer seems dumbfounded.

"What's the name of that section, judge?" Then, "we still maintain that this lease spells out the tenants' obligations, and these tenants violated the lease."

"I have no choice, counsel, I must apply the law. The law is very clear on what it requires."

The lawyer fumes, asks if this means that leases aren't worth the paper they're written on anymore, and then announces that he'll appeal.

The judge is unruffled. He explains the appeal procedure to the lawyer, and then turns to the young couple and advises them to get a lawyer to handle the appeal. He gives them the address of a legal services clinic, in case they don't have enough money to pay for a lawyer.

My wife and I exchanged glances; maybe we should have gotten a prop from Rent-A-Kid.

The next case starts off merely complicated and then moves on to obscurity and impenetrability. It's like something thought up by a sadistic law school professor.

The defendant is a small young man with a moustache who sold someone a car but never got the money because the check he accepted (for $300) was stopped. He is suing to get his money.

The confusion starts with the defendant, who claims that he in fact is not the defendant but a third party. He's a tall guy in his 30's, with shaggy hair, a moustache, and a pretty good sized belly hanging over his belt. His story is that he owns a garage where the plaintiff and another man worked. One day the plaintiff sold an old car to the other man, and, since the other man didn't have $300 to pay for it, he asked the boss (the guy in court) to advance him the money. The boss did so, writing the seller of the car a check for $300.

"The very next day, your honor, the fellow who bought the car tries to drive it out to Mundelein, and damn near kills himself. The thing's driving funny, so he pulls into a gas station and has them look at it. The tell him that the whole front end's gone—it will cost him $500 to fix it, and he can't drive the car unless he wants to kill himself. So he asked me to stop the check, and I do. It's him who should be in court, not me."

The next stage of confusion has to do with the car. The self-proclaimed third party claims that it was in reality an old taxi that had been driven 250,000 miles. He says the seller didn't tell the buyer that it had been a taxi, or that it had so many miles on it. He claims he's got four witnesses who saw the sale take place at the garage. The seller pipes up that the sale did not take place in the garage. It took place four days earlier at his apartment, and his wife—who is there beside him—is a witness.

The next stage of complication is that the plaintiff (the guy who sold the car; sometimes you can't tell the parties without a score card) had already approached the state's attorney's office with a request that the defendant (the guy who stopped payment on the check) be prosecuted. Since the state's attorney had told them that there was no case, the defendant assumed that he was off the hook, and so didn't bring any witnesses to court this time.

It's the judge's sad job to tell him that he's wrong. "This is a civil court. The state's attorney didn't see reason to prosecute the matter criminally, but that still leaves the plaintiff his rights in a civil court. You should have brought witnesses today. It's only your word against his."

The big guy again claims that he's not the real defendant, but only the third party, but again the judge reminds him that, like it or not, it was he who wrote the check and stopped it, so he's the defendant.

"You should have brought the other man along, so that he could have testified."

This is the only case where the judge looks a little uncomfortable. He seems sadly resigned as he decides for the plaintiff (for some reason not quite the full amount but $275), and, when the defendant says he'll appeal, he advises him to bring his witnesses to the next trial.

Then it is our turn. We go to the bench and are sworn in together: my wife and I on one side, the wallpaper hanger and his son on the other. I tell our side of it first. We fulfilled our part of the bargain by paying them for their work, but they didn't fulfill theirs because, when the paper began to fall off,

they refused on three separate occasions to come out and fix it. We wrote them a registered letter, giving them one more chance to fix it and saying that a lawsuit would be our only alternative, but they still didn't repair it.

They reply that they warned us that paper on our walls might develop a few air bubbles. They add that the paper itself was inferior and that they put seven hours on the job, more than can be reasonably expected for the amount of money they were paid.

The judge asks us to respond, and we say that they told us the paper would hang "tight as a drum," that they themselves selected the paper, and that they put in nothing like seven hours.

What seems to sway the judge, though, more than any of the arguments pro or con is the photographs we've brought of the paper peeling off the walls. And what pictures! The paper is curling off the walls like bark off a dead tree, crumpling, buckling, bubbling, rippling, writhing—everything but lying flat. The judge takes one look at these and his eyes light up. He says to the wallpaper hanger, "You said that the paper was separating from the backing, but it looks to me like everything is coming off the wall."

The wallpaper hanger stares at the pictures, clears his throat, and finally says, "I can't explain it, your honor."

The judge decides in our favor, reasoning that we wouldn't have gone ahead with the job if we had been warned that it might come out looking like that. We get back what we paid them, the cost of the paper, and even court costs. Another triumph for justice.

I didn't think about the educational value of the experience until later, but it came to me that I and the other people in the courtroom had learned a lot about the law in a short time. That there's a statute that spells out the obligations of landlords who claim damages; that a statute has precedence over a lease when the two are in conflict; that you may fail to get a criminal indictment against someone but still have a civil case against him.

Law-related classes don't seem to visit small claims courts very often, but if these courts are like the one I was in, they offer a lot for students. The judge explains everything clearly and simply, and there are so many trials that in a typical session students probably would be exposed to at least six or eight areas of law.

In addition to picking up some points of law, students might also learn something about the art of persuasion. None of us sounded remotely like Clarence Darrow or Louis Nizer, but I think that those who won were the ones who told the most credible story and produced the most evidence. Letters, records, photos, witnesses—anything to back up your case and give the judge something to go on besides one person's word against another's.

The most important lesson, though, is that the system can work, that ordinary men and women can go in, tell their stories, and get a fair hearing.

People behaved reasonably and civilly, even though most of them had worked up a pretty good grudge against their opponents. Instead of yelling, swearing, threatening mayhem, or all the other accepted means of persuasion in Chicago, people told their stories calmly and in a level tone of voice. Oddly enough, the only exception was the lawyer on the losing side of the landlord/tenant case, and he was probably not so much mad at the judge's decision as embarrassed that he had been shown up for not knowing the law.

So all in all here's part of the system that seems to be working like it's supposed to. A little charmed circle where decorum prevails and disputes are resolved reasonably. Not at all a bad thing to expose students to. □

"I'D BE OUT BY NOW—EXCEPT THAT THE ONE PHONE CALL I MADE WAS OBSCENE."

NEWSCLIPS

Minor Disputes Comments Spur Major Headlines

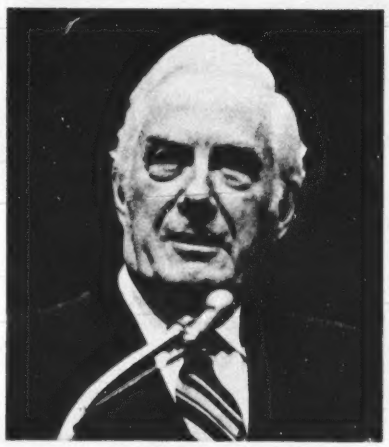
Lawyers' and judges' "preoccupation with legal theory and formalism" has led to the "smug assumption that conflicts can be solved only by law-trained people." Unless new ways are found to settle disputes, "the country might be overrun by hordes of lawyers hungry as locusts."

While statements such as this might seem commonplace when delivered by a Ralph Nader, they resulted in headlines and raised heads when spoken by Chief Justice Warren Burger at an ABA-sponsored conference on the resolution of minor disputes. Burger emphasized that this situation is "aided and abetted by the inherently litigious nature of Americans."

Burger also made it clear that his comments should not be interpreted as an endorsement of Shakespeare's oft-quoted line in *King Henry VI*, "The first thing we do, let's kill all the lawyers." Lawyers and judges have made great contributions to achieving a fair and humane society, Burger said. But the problem may be the profession's belief "that the more complex the process, the more refined and deliberate the procedure, the better the quality of justice which results."

Burger suggested that "people with problems, like people with pains, want relief, and they want it as quickly and as inexpensively as possible. The role of law, in terms of formal litigation, with the full panoply of time-consuming and expensive procedural niceties, can be overdone."

The ABA conference is but one of many recent efforts to identify and develop effective means of resolving minor disputes. At the federal level, the Justice Department is about to pilot several "neighborhood justice centers." Also, legislation is pending in Congress (S. 957, H.R. 2482, H.R. 2965) that would provide financial support to state efforts to improve their minor dispute programs. The next issue of *Update* will explore the problems, alternatives and implications of new methods designed to resolve minor disputes.



Equal Justice Series Debuts

Remember those boring descriptions in American history texts of *Marbury v. Madison* and *McCulloch v. Maryland*? The Judicial Conference of the United States does, and so it's developed, in cooperation with WQED-TV of Pittsburgh, a lively film series called *Equal Justice Under Law*. The series dramatizes the incidents and Supreme Court deliberations in *Marbury, McCulloch, Gibbons v. Ogden*, and *U.S. v. Burr*.

The series will be broadcast three times over the Public Broadcasting Service. During the week of September 12, there will be daytime broadcasts of the films; consecutive Saturday evening presentations will occur on September 24 and October 1; and schooltime broadcasts will be offered on successive Mondays beginning November 21. Check local listings for exact time in your area.

Best of all, everything is being done to encourage you to use these films. Unlike most TV programs, the series may be videotaped for future classroom use. For those without videotaping capabilities, the films are available on a free loan basis through August, 1978 from Steve Mahon, Association Films, Inc., 1815 Ft. Myer Drive, Arlington, Virginia 22209 (703-525-4475). If you wish to purchase the films (or rent them as of September, 1978), contact the National Audiovisual Center, General Services Administration, Order Section, Washington, D.C. 20409 (301-763-1896).

Teaching guides are also available—just contact your local Public Broadcasting station. The guides may also be copied for classroom use.

Greasy Tacos Stir Up More Than Indigestion

According to an Associated Press report out of Fort Scott, Kansas, greasy tacos have stirred up indigestion, an editorial, First Amendment charges, and a restaurant career.

It all began seven months ago when Mark Brillhart, editor of the student newspaper at Fort Scott High School, complained in an editorial about greasy tacos in the school cafeteria. Partly as a result of his editorial, his journalism adviser, Lily Kober, was assigned other duties by the school principal, William Weatherbie. The principal explained that even though his wife is a cook in the cafeteria, that had nothing to do with the reassignment.

Now, the Kansas-National Education Association as well as the Student Press Law Center (see Spring, 1977 issue of *Update*) are looking into the incident. Brillhart, meanwhile, has abandoned journalism and, perhaps in an effort to have more control over the quality of tacos, plan to pursue a career in restaurant management.

Copyright and You

Effective January 1, 1978, a new federal copyright law affecting authors, educators and librarians, among others, goes into effect. Depending upon which side of the fence you're on, you might cheer or jeer the new law, for it limits the number of copies that may be made of articles, essays, charts, and other staples of classroom instruction.

First, some general notions of what educators are allowed to do. For class-

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room use and research purposes, you may make a *single* copy of such copyrighted material as a chapter from a book, a short story, an essay, or a poem, as well as a chart, graph, diagram, drawing, cartoon, or picture. You may make multiple copies for your class, but no more than one per pupil, and only one item can be reproduced from each book or periodical.

The prohibitions and restrictions prevent teachers from copying "consumable" materials such as workbooks and test booklets, a work which has already been copied for another class in the same building, or more than one work by the same author during the same term. Certain word and percent limitations are also prescribed by the Act. In all cases, copied material must carry a notice of copyright.

The Act includes a separate section on copying by libraries and archives. Among the section's more interesting guidelines: an authorization for copying a published work in order to replace it as long as an unused replacement cannot be obtained at a fair price; and exemptions from liability for library employees in cases of unsupervised use of copying equipment, as long as a notice indicating that reproductions are subject to copyright law is displayed on the equipment.

The Copyright Office will be happy to send you, at no cost, more information than you'd ever want to know about the new copyright law. Write to the Copyright Office, Library of Congress, Washington, D.C. 20559. Since the *Report* (No. 94-1476) contains the information of primary interest to most educators and librarians (see particularly pp. 65-79), you may want to order only this publication.

ACLU Faces Moral Dilemmas

"Civil liberties don't mean anything if everyone is not defended--including the most despised," says Aryeh Neier, ACLU Executive Director. The ACLU put those words into practice in two recent cases, and is drawing the ire of long-time supporters as a result.

The first case is particularly interesting since it pits two ACLU groups against each other. It involves a group of blacks who attacked white marines, believing them to be Ku Klux Klansmen who had been harrassing blacks. The blacks, represented in part by Los Angeles ACLU lawyers, have contended that their acts were in self-defense, while the Klansmen, represented by a San Diego ACLU volunteer, claim denial of free speech and assembly.

Shortly thereafter, the ACLU found itself enmeshed in a second controversial case, this time defending a group of Nazis who were denied the right to march in Skokie, a heavily Jewish suburb of Chicago.

Many long-time ACLU supporters are very troubled by the ACLU's defense of groups dedicated to the destruction of civil liberties, and are expressing their displeasure publicly and financially. The President of the National Lawyers Guild, for example, described the ACLU's defense of the KKK as "poisonous even-handedness," and over 12% of the Illinois ACLU membership have withdrawn their support in protest against the Nazi case.

Newspaper Course on Crime and Justice

"Youthful criminals and corporate crooks who break the law—again and again? Laws that are outdated and unenforceable? Law enforcement officials who can't control crime in their own ranks?

These are but a few of the questions addressed in a 15-part series on "Crime and Justice in America" which is now appearing in newspapers throughout the country. Divided into six major themes —Understanding Crime, Institutionalized Crime, Street Crime, Criminal Law, The Administration of Criminal Justice, and Punishment—the series includes articles by fourteen scholars representing law, education, sociology, criminology, history and other disciplines. Spanish translations of the series are also available.

An added dimension of the series is its use in community education programs. Courses by Newspaper helps colleges, universities and community groups establish programs on the series topic. Among its services are the provision of credit, the anthology *Crime and Justice in America* ($6.25), a *Study Guide* ($2.95), and a *Source Book* ($2.50). The publications are available from Publishers, Inc., 243 12th Street, Drawer P, Del Mar, California 92014.

For more information about Courses by Newspaper, contract George A. Colburn, Project Director, University of California, San Diego, Q-056, La Jolla, California 92093, 714-452-3405. —NG

Joanna Banthin

Focus on Juvenile Law

Print and audio-visual materials about young people's rights and responsibilities.

One of the findings of YEFC's recent national study of law-related education is that students are most interested in themselves, and building on that interest is one of the easiest ways to develop a law-related program. Thus this issue's *Curriculum Update* focuses on materials that deal with the rights and responsibilities of juveniles in civil and criminal settings, particularly as they relate to parents, schools, employers, and other individuals.

Entries have been grouped under four general headings: general issues, the school, working and consuming, and crime and delinquency.

General Issues

- ***Your Legal Rights as a Minor*** (1974). Robert H. Loeb. Hardback. Grades 9-12. An overview of laws that affect minors in the school, in the family, at work, and in the community at large. Covers driving, drinking, drugs, commercial rights and restrictions, sex, marriage, and criminal proceedings. Includes tables that present state-by-state differences in age restrictions. Question and answer format. The cost is $6.90. Address orders to Franklin Watts, Inc., Attention: Order Department, 730 Fifth Avenue, New York, N.Y. 10019.
- ***When I Get to Be 18! Juvenile Law*** (1976). The Usable Law Program. Sound filmstrip, 10 minutes. Teacher's guide and classroom set of student study books provided. Grades 8-12. An excellent review of some aspects of juvenile law that are most relevant to young peoples' day-to-day lives. Notes parents' obligations to their children and the legal requirement that children obey their parents. Explains who owns a minor's paycheck and describes the restrictions on minors' ability to contract and resulting liabilities. Describes other limits on minors' right to marry, vote, and drink alcoholic beverages. Tells how a minor may become "emancipated." The purchase price is $43.00 with cassette, $40.00 with record. Address orders to BFA Educational Media, 2211 Michigan Avenue, P.O. Box 1795, Santa Monica, Cal. 90406.
- ***Youth and Society, Rights and Responsibilities*** (student booklet, 1977); ***Strategies for Teaching Rights and Responsibilities*** (teacher's guide, 1977). Carolyn Pereira (ed.). Paperback. Grades 9-12. Student booklet also available in Spanish. A basic text on the legal rights and responsibilities of young people in their relationships with their families, their employers, police, and government. Topics include marriage, annulment, divorce, medical care, working conditions, contracts, landlord-tenant relationships, status offenses, criminal proceedings, and torts. Cites relevant statutes and court decisions. Teacher's guide presents suggested instructional strategies, including those involving role-playing, field trips and speakers. The student book is free except for postage and handling. The teacher's guide costs $2.00, plus postage and handling. Address orders to Constitutional Rights Foundation/Chicago Project, 122 South Michigan Avenue, Suite 1854, Chicago, Ill. 60603.
- ***Justice Without a Jury: Administrative Law*** (1976). Sound filmstrip, 10 minutes. Teacher's guide and classroom set of student study books provided. Grades 9-12. One of the few pieces of material to deal with this often-overlooked area of the law. Discusses the legitimacy of rule-making and rule-enforcing agencies such as school boards, the Internal Revenue Service, state agencies that oversee employment and unemployment, and motor vehicle bureaus. Includes advice on finding legal services. The purchase price is $43.00 with cassette, $40.00 with record; address orders to BFA Educational Media, 2211 Michigan Avenue, P.O. Box 1795, Santa Monica, Cal. 90406.

The School

Recent changes in laws affecting schools have had a significant impact on our educational system. These materials focus on some of the court decisions and legislation. The strip *Justice Without a Jury* (discussed under "General Issues") might also be used to introduce a discussion of the power of school boards.

- ***At Issue: Youth and the Constitution*** (1976). 3 sound filmstrips, 1 audio cassette. Filmstrips 15 minutes each, cassette 40 minutes. Teacher's guide provided. Grades 8-12. An excellent overview of major issues in student and teacher rights in the 1960s and 1970s, describing the conflicts and the legal procedures that were used to resolve the conflicts. *Students in Court* focuses on *Tinker v. Des Moines Independent Community School District*, a landmark case on the constitutional rights of students. Briefly describes restrictions schools have historically placed on student expression, introduces the plaintiffs in the case and explains their reasons for wearing black armbands that symbolized their opposition to the war in Vietnam. Traces their case through the federal courts, explaining critical phrases in the Supreme Court decision such as "symbolic expression." *Rights and Responsibilities* examines students' right to express their opinions in print. Reviews a 1908 case in which two girls were suspended for "ridiculing their elders" by giving a friend's satiric poem to a local newspaper. Contrasts the attitude toward these girls with three more recent court decisions on underground newspapers. In these cases, federal courts have ruled that schools cannot put "prior restraints" on the content of student publications or prevent the distribution of these publications. The final filmstrip, *Rights and Individuality*, looks at issues involving personal appearance, noting the lack of consensus in U.S. district courts and appeals courts on cases involving hair length and dress codes. Reviews several decisions on both sides of the issue, and examines how the Freedom of Expression, Due Process, and Equal Protection Clauses have been interpreted. Also discusses the use of the Equal Protection Clause in cases involving woman athletes who want to play on men's teams. *Teacher Rights: The Case of Charles James*, the audio cassette, features an interview with Charles James, a teacher who was dismissed for wearing a black armband to protest the Vietnam war. He and his wife recount their motivations, official and unofficial reactions from employers and neighbors, and the

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effect of the events on their family. Traces the case from the local school and school district to the state education department and the state and federal court systems. The purchase price is $79.00. Address orders to Prentice-Hall Media, Inc., 150 White Plains Road, Tarrytown, N.Y. 10591.

- ***Busing: A Rough Ride in Southie*** (1976). 16mm. film, 28 minutes. Teacher's guide provided. Grades 9-12. Documentary film examining the effects of court ordered busing in South Boston. Includes interviews that give the reactions of three families affected by busing: a white Irish Catholic family living in South Boston and supporting busing, a white family in South Boston opposing busing, and a black family from Roxbury whose children are bused to South Boston. In addition to the interviews, the film presents the reactions of the general community and depicts anti-busing demonstrations and rallies. The purchase price is $350.00, the rental fee $40.00. Address orders to Kauffman and Boyce Productions, P. O. Box 283, Allston, Mass. 02134.

- ***Dealing with Authority*** (1976). Relationships and Values series. 2 sound filmstrips, 6-7 minutes each. Teacher's guide provided. Grades 6-9. Two situations are presented. In one, Harriet is harassed by various authority figures—her mother, teachers, the bus driver, her coach, the student council president. At the end of the day, she is the authority figure in the Kiddie Kraft Workshop—and she faces the question of whether she should exert authority or try to be "likeable." In the second vignette, a basketball player who has transferred from one school to another in the middle of the season is asked to give his new coach his old school's plays. Should he or shouldn't he? Good introduction to a discussion about what makes authority legitimate. The purchase price is $29.50. Address orders to Guidance Associates, 757 Third Ave., New York, N.Y. 10017.

- ***Your School Newspaper*** (1975). Part 6 of Freedom and Responsibility series. Sound filmstrip, 10 minutes. Teacher's guide. Grades 9-12. A discussion of freedom of the press as it applies to high school newspapers. Emphasis on responsible behavior. Explains that student editors and writers are minors, which defines the roles advisors and school adminstrators play. Defines libel, invasion of privacy. Condemns suppression of controversial stories, but supports the right of teacher-advisors to enforce reasonable guidelines. This filmstrip is part of a series, but can be purchased separately for $25.00. Order from Pathescope Educational Media, Inc., 71 Weyman, New Rochelle, N.Y. 10802.

Working and Consuming

Many young people work. Almost all of them are active consumers. Thus they have an interest in laws that affect credit, contracts, warrantees, working conditions, wages, and hiring and firing.

- ***Girls and Boys—Rights and Roles*** (1976). Relationships and Values series. 2 sound filmstrips, 10 minutes each. Teacher's guide provided. Grades 5-8. The filmstrips portray dilemmas created by stereotyped "men's roles" and "women's roles." In one, committee members argue about a parade float. Questions about the committee structure, the theme of the float, and division of labor all seem to divide the group on gender lines. In the second strip, a girl and her boyfriend both apply for the same summer job. She is offered it, but can't decide whether to accept. Both strips are open-ended in order to encourage discussion. The second strip is an excellent springboard for such questions as do women themselves foster unequal opportunity? The purchase price is $29.50. Address orders to Guidance Associates, 757 Third Ave., New York, N.Y. 10017.

- ***Job-Related Issues: What's Right?*** (1976). Values in a Democracy series. 2 sound filmstrips, 7 minutes each. Teacher's guide, spirit masters for student work sheets. Like other filmstrips in this series, these raise questions that teenagers might raise themselves. The first situation involves a girl who has a job as a waitress. Should she report her tips accurately because that is the law? Or should she underreport them because "everyone" does? The second situation involves community health and safety. Some boys have been hired to fix a settling pool in which chemically contaminated waste water is treated before it goes back into a creek. While the pool was broken, however, contaminated water entered the town's drinking water. The problem has not been reported because it might mean closing down the plant and putting people out of work. Should the boys report it? The purchase price is $29.50. Address orders to Guidance Associates, 757 Third Avenue, New York, N.Y. 10017.

- ***The Law and Your Work: Employment Law*** (Pix Productions, 1976). The Usable Law Program. Sound filmstrip, 12 minutes. Teacher's guide, classroom set of student study guides provided. Grades 9-12. Explains how federal and state laws affect working. Tells what questions can and cannot be asked in job applications. Briefly discusses workmen's compensation, union, closed, and open shops, "just cause" for dismissal, and unemployment compensation. Describes ways of presenting grievances to an employer. Tells how the legal system can be used by the worker. The cost is $43.00 with cassette and $40.00 with record. Address orders to BFA Educational Media, 2211 Michigan Avenue, P.O. Box 1795, Santa Monica, Cal. 90406.

"But everything you're promising me is already guaranteed in the Constitution."

Crime and Delinquency

The thrust of the materials listed here concerns crimes usually associated with young people. The materials emphasize legal rights and responsibilities, punishment, and in some cases, breakdowns in the family structure.

- ***The Clubhouse*** (1974). 16mm. film, 10 minutes. Brief teacher's guide provided. Grades 2-6. A simple, poignant illustration of what vandalism means. Four

Cartoon has been removed by ERIC due to copyright law.

Drawing by Lorenz; © 1977
The New Yorker Magazine, Inc.

young boys show their pride in their clubhouse by polishing windows and raising their flag. Because they are bored, they walk around town, and finally begin to throw rocks at the windows in the school building. They run back to their clubhouse when the police come and find someone has broken their windows and knocked down the walls. The expression on the boys' faces tells the story. An excellent introduction to discussions of peer pressure, responsibility, and what is right and what is wrong. The purchase price is $150.00, the rental fee $25.00. Address orders to Motorola Television Programs, Inc., 4825 North Scott St., Schiller Park, Ill. 60176.

- ***If the Police Stop You . . . Stop, Search, Arrest Law!*** (Pix Productions, 1976). Sound filmstrip, 10 minutes. Teacher's guide and classroom set of student study guides provided. Grades 9-12. A straightforward presentation of the rights and responsibilities of citizens and police. Explains circumstances in which police can stop and/or search an individual. Recommends cooperation and defines citizen safeguards, "reasonable suspicion," "probable cause," and "Miranda rights." Describes arrest procedures for adults and juveniles and tells how a person can file a complaint if he feels police have treated him unfairly. The cost is $43.00 with cassette $40.00 with record. Address orders to BFA Educational Media, 2211 Michigan Avenue, P.O. Box 1795, Santa Monica, Cal. 90406.

- ***America's Runaways*** (1976). Christine Chapman. Hardback. Teacher's guide provided. Grades 11-12. A well-written, readable examination of the problem of runaways. Includes interviews with young people who have run, letting the rebellious, the frightened, the cunning, the proud, and the uncertain speak for themselves. Examines attitudes of police, judges, parents, psychiatrists, and social workers. Excellent discussion of laws that define children as the property of their parents and as individuals who cannot speak for themselves. Good examples. The cost is $8.95. Address orders to William Morrow & Company, Order Department, 105 Madison Avenue, New York, N.Y. 10016.

- ***The Child and the Law: Helping the Status Offender*** (1976). Kathryn W. Burkhart. Public Affairs Pamphlet series. Teacher's guide provided. Grades 9-12. Discusses the backgrounds of young people who get in trouble or for other reasons are put in the custody of the court. Gives many examples while exploring the problems of institutional care, punishment, and the need for legal reform. The cost is 50c for a single copy, 28c per copy for classroom sets. Address orders to Public Affairs Committee, Inc., 381 Park Avenue South, New York, N.Y. 10016.

- ***Requiem for Tina Sanchez*** (WNBC-TV, 1976). 16mm. film, 25 minutes. Teacher's guide provided. Grades 9-12. A picture of life and death on the "Minnesota Strip" in New York City, where young runaway girls work as prostitutes. Pimps, police, and girls themselves tell about why the girls run away from small towns and what keeps them on the Strip. Includes profiles of two girls: Tina, who left Dobbs Ferry, New York, at 11, became a prostitute at 13, and was murdered at 15, and Tammy, a young girl from Canton, Ohio, whose "adventures" took the same path. Notes absence of resources for dealing with the runaway problem. The rental fee is $15.50, plus shipping and handling. Address orders to Correctional Service of Minnesota, 1427 Washington Avenue South, Minneapolis, Minn. 55404.

- ***The Youngest Outlaws: Runaways in America*** (1976). Arnold P. Aubin. Hardback. Grades 8-12. An informally written presentation of the problem of young people who run away from home. The author offers a number of case studies in his attempt to present some of the runaways' reasons for leaving home. Includes a discussion of the legal status of runaways, typical police practices in dealing with runaways, alternatives to institutionalization, and help for runaways on the road. The cost is $7.29. Address orders to Julian Messner, Order Department, 1230 Avenue of the Americas, New York, N.Y. 10020.

- ***Legal Issues: What's Right?*** (1976). Values in Democracy series. 2 sound filmstrips, 5-7 minutes each. Teacher's guide and spirit masters for student work sheets provided. Grades 9-12. Two filmstrips focus on real problems areas—cars and shoplifting. In one, a boy hits another car in a parking lot. Should he report it or drive away? In the other, a girl is detained after her friend has stolen a blouse from a boutique. She is asked to identify her friend or "be considered an accomplice." What should she do? The "right solution" is not presented, and student discussion is encouraged. The purchase price is $29.50. Order from Guidance Associates, 757 Third Avenue, New York, N.Y. 10017.

- ***Shoplifting*** (Associated Press, 1977). 2 sound filmstrips, 12 minutes each. Teacher's guide provided. Grades 6-12. Merchants, law enforcement officers, and teens themselves discuss shoplifting. Emphasizes that shoplifting is a crime, not a game. Shows how retailers are fighting the problem by using electronic tags, cameras, and security guards and by prosecuting those who are caught. Explains the impact an arrest and conviction record can have on a person's future. The cost is $53.00. Address orders to Prentice-Hall Media, Inc., 150 White Plains Road, Tarrytown, N.Y. 10591.

Will Bernard

Cases on the Parent-Child Relationship

UNWILLING ADOPTION

Unmarried and pregnant, Charlotte asked her doctor to arrange for an adoption. After the baby was born she completed all the legal formalities.

Then, months later, she decided she had made a mistake. In a court hearing Charlotte tried to have the adoption cancelled. Grounds: duress.

"I was weak and depressed at the time I signed those papers," she explained. "Giving your consent in that mood should not count."

However, the court ruled that the adoption was valid. Calling Charlotte's mood normal under the circumstances, the court said people would become leery of adopting children if the procedure was too easy to revoke.[1]

It is true that an adoption may be cancelled because of duress. But, out of concern for the adopting parents, courts are cautious about recognizing such a plea.

In another adoption case the mother claimed duress on the ground that her doctor, her clergyman, and her own mother had all urged her to give the baby up.

But again, the court said this was not enough to constitute duress in the eyes of the law. The court pointed out that at the time of the adoption, in juvenile court, the mother had been clearly informed that the decision was hers alone to make.[2]

On the other hand the court did find duress in another case involving a young married couple. Here, a few days after the birth of their baby, the father told the mother that he had lost his job and was walking out on her.

In desperation, she decided on an immediate adoption. But this time a court decided later that these pressures—along with technical irregularities—were too serious to disregard. Revoking the adoption, the court said: "The circumstances prevented her from exercising her own free will."[3]

1. *Anonymous v. Anonymous,* 23 Ariz. App. 50, 530 P. 2d 896 (1975)
2. *Re Adoption of Gambione,* 262 S. 2d 566 (1972)
3. *Huebert v. Marshall,* 132 Ill. App. 2d 793, 270 N.E. 2d 464 (1971)

(For this and other *Family Lawyer* articles, descriptions are sometimes adapted from cited cases).

WRONGFUL BIRTH

"My father scarred me for life."

So said a young woman when she filed a lawsuit against her father for damages. She charged that by refusing to marry her mother he had caused her to be born illegitimately and to go through life in disgrace.

But the court ruled against her. Allowing this type of claim, said the court, would open the floodgates to countless lawsuits by disgruntled children.

"One might seek damages for being born of a certain race, another for inheriting unfortunate family characteristics; one for being born into a large and destitute family, another because a parent had an unsavory reputation."[1]

Courts have generally rejected these "wrongful birth" suits brought by children against their parents. As a rule they have also frowned on such claims when brought against a third party.

Two children sued a doctor for performing an unsuccessful vasectomy on their father. Their unexpected baby sister, they said, had reduced their share of 1) his estate, and 2) his affections.

But again the court turned thumbs down. Regarding the father's estate, the court said children have no fixed right to a particular share anyhow. Regarding the father's affections, the court said they had no legal right to that either.

"The law cannot require a parent to love a child," said the judge. "It forbids abuse but does not compel devotion."[2]

Occasionally, however, a third party may be held liable to the parent if not to the child. Thus, one court said a mother could hold her doctor liable if he neglected to warn her of the danger of a defective birth. At least, said the court, she could collect the extra expenses arising out of the child's impaired condition.[3]

1. *Zepeda v. Zepeda,* 41 Ill. App. 2d 240, 190 N.E.2d 849 (1963)
2. *Cox v. stretton,* 352 N.Y.S. 2d 834 (1974)
3. *Jacobs v. Thiemer,* 519 S.W. 2d 846 (1975)

DEPRIVED CHILD

Little Nancy's mother, injured in a bus accident, was left permanently disabled. In due course the bus company was sued not only by the mother but by Nancy as well.

"The child," argued her lawyer in court, "has been deprived of the care and companionship of her mother, all because of the negligence of the bus

driver. His company ought to pay for her loss of these services."

But the court rejected Nancy's suit, saying that a child has only a moral—not a legal—right to the "services" of a parent. The court noted that the jury, in awarding damages to the mother, would probably add something anyhow for the hardship imposed upon the child.[1]

Generally speaking, the child deprived of a parent's attentions through a third party's negligence cannot collect damages. In fact, most courts take that view even if the harm to the parent-child relationship was inflicted deliberately.

Consider: A lawsuit was filed on behalf of a small boy against the "other woman" for having induced his father to abandon his family.

"If for no other reason," said the boy's attorney in court, "we want to hold her liable as a warning to other home-wreckers."

But the judge rejected the suit, saying he doubted that a fear of damages would have any deterrent effect. Such philandering, said the judge, "springs from motives that seldom if ever count the cost."[2]

However, in a few of these alienation-of-affections cases, courts have ruled in favor of the deprived child. Thus, two youngsters were awarded damages against a man who had lured away their mother. Said the court:

"Children, the same as parents, have rights as well as duties. Enticement of a mother is a grievous, outrageous, and tragic wrong to her child."[3]

1. *Halberg v. Young,* 41 Hawaii 634 (1957)
2. *Morrow v. Yannantuono,* 273 N.Y.S. 912 (1934)
3. *Miller v. Monsen,* 288 Minn. 400, 37 N.W. 2d 543 (1949)

MEDDLESOME PARENTS

After six stormy years of matrimony, Edna and George came to the parting of the ways. Edna, blaming George's parents for the breakup, filed a lawsuit against them for damages.

"Ever since our wedding," she told the court, "they have been meddling in our affairs. They had no right to do that. Once we were married, it was up to them to leave us alone."

But the court dismissed Edna's claim, saying parents have special privileges in dealing with their children.

"The law is tender of the parental relationship," said the court. "The parent has the liberty of extreme solicitude for the child even after marriage, and may advise freely and frequently and even foolishly."[1]

This is the usual attitude of the courts, so long as the interference does not go beyond reasonable bounds. Of course, parents have even clearer rights before a child's marriage.

Another case involved a father's right to exclude from the family home an unwanted boy friend of his daughter. The court said:

"A father is under no obligations whatsoever to allow one of whom he does not approve as a prospective husband to enter his home."[2]

On the other hand, the law condemns excess at all stages of the parent-child relationship. One father was arrested on a charge of assault and battery after he administered a brutal beating to his young daughter. Although he claimed "parental privilege," the court found him guilty. The judge commented:

"Where the punishment is so cruel as to show that the parent was not acting for the benefit of the child but to satisfy his own evil passion, he is no longer to be considered as a judge administering the law of the household but as a malefactor guilty of an unlawful assault on a helpless person entrusted to his care."[3]

1. *Monen v. Monen,* 64 S.D. 581, 269 N.W. 85 (1936)
2. *Smith v. Kiger,* 5 Cal. App. 2d 608, 43 P.2d 565 (1935)
3. *People v. Green,* 155 Mich. 524, 119 N.W. 1087 (1909)

"Actually, the Equal Opportunity people have been quite specific about the qualifications for this job: you have to be a Black woman named Gonzales."

K-12 Multimedia Materials
are available on
the concepts

Authority & Privacy

A limited number of
preview copies are available

law in a free society

For further information regarding materials, programs or consulting services, contact
Charles N. Quigley or Jack N. Hoar, Law in a Free Society, 606 Wilshire Blvd., Suite 610, Santa Monica, Ca. 90401, (213) 393-0523

Getting Started

Classroom teachers provide tips on how to make law part of your teaching.

Charles White

Last year an ABA survey of high school social studies teachers in five states found that a considerable number of those teaching about the law began without special teacher training and without the help of a law-related project. We wanted to know more about how teachers do it on their own and what tips they have for others interested in teaching about the law, so we conducted in-depth interviews with classroom teachers.

This is the first in a series of articles based upon those discussions. It explores how secondary teachers in the Chicago area overcame what we've found to be one of the biggest obstacles to instituting law-related programs—teachers' sense that they don't have an adequate command of this subject area—and it focuses on curriculum materials and community resource people, two critical components of law-related education that helped them gain the needed confidence. In later issues we'll look at such topics as what methods teachers use, how they put together programs that meet the needs and interests of their particular students, and how elementary teachers have introduced law in their classrooms.

The teachers in this article are about evenly divided between the inner-city and the suburbs, and represent a wide variety of schools and students. None of them is a lawyer or a law student. A few have taken criminology or political science courses, giving them some background in the field, but most began with no particular expertise in the area. Though the courses/units they've developed differ in many respects—running from four weeks to a full 20-week semester, and covering such varied approaches as literature and law, criminology, and practical law—these teachers took pretty much the same steps in putting their programs together and making them work.

The teachers we talked to began teaching about law for all sorts of reasons. A couple inherited a law course when another teacher left, a couple began because of their dissatisfaction with the civics or history classes they were teaching, but most seem to have begun because law was a subject that interested them and their students and seemed important to know about.

Edie Sauter, a teacher at Ridgewood High School in suburban Norridge, began when Watergate dominated the news: "With crime in all the papers, and cop shows on TV, and Watergate everywhere, there was just no getting away from law."

For Marion Cobb, a teacher at Westwood Junior High in suburban Park Forest, the process began when she taught a short unit on trials in a seventh grade social studies class. "The kids showed so much interest that I proposed a separate course on law in the eighth grade. I passed out questionnaires to my students to find out what they were interested in, and built the course around what they already knew a little about, mostly from TV—crime, arrest, and trial procedure."

For Chuck Thomason of Chicago's Whitney Young High School, law-related education was an outgrowth of volunteer work in human relations in his community, a chance to help his students explore their feelings about crime and a host of related issues. And for Charles Kuner of Farragut High in Chicago, law was a chance to give his inner-city youngsters some of the crucial skills that they'll need to survive.

The reasons differ in specifics, but are pretty much the same in substance—law is important, interesting, and fun to learn about.

Finding Materials

One of the first things our teachers did was to look for law-related materials. Even as recently as five years ago, teachers could legitimately complain of the scarcity of law-related curriculum materials. That's not so any longer. According to Chuck Thomason, teachers today "are flooded with materials about the law."

The problem is finding materials that are right for the course you want to teach. Our teachers agreed that there didn't seem to be one curriculum package that answered all their needs. Perhaps because the field is new, there aren't yet definitive texts in the field. Some of our teachers used no text, and even those who did, relied heavily on handouts, a-v, and other supplementary materials.

The key, then, for teachers is to be aware of the range of possible materials. Here are some tips that the teachers had on how you can find materials for your class.

1. Publishers' catalogues are a good place to start. Charlie Hart, a teacher at Elgin High School in Elgin, was one of many teachers who found materials through this source. He points out that most publishers have been active in this area, and since the field is new, most books have come out within the last few years and are relatively up to date.

2. Look into source books that are specifically law-related. More than half of our teachers found out about

materials in one or another of the sources that are listed in the box below. And find out if your system has law-related curriculum guides listing materials and strategies. Teachers in Chicago used curriculum guides on law put out by their school system, and one teacher made use of an Illinois Office of Education curriculum guide on consumer law.

3. Tap the resources of your school. Diane Farwick of Chicago's Waller High found a good resource, the Grolier Consumer Education Kit, in the reading lab of her school; three other teachers got invaluable help from their school librarians, who prepared special bibliographies of law-related books in the school library. These lists were a good resource for students' research papers and general reading about law, lawyers, and trials.

4. Don't forget that other libraries are a resource too. Several of our teachers directed students to the resources of a nearby public library, and a couple reported renting or borrowing films from the a-v service of the public library or a nearby college. Besides the savings in cost, renting films from public or college libraries is often quicker and less tricky for scheduling than getting them from a commercial source.

5. Don't overlook magazines and newspapers. Edie Sauter believes "there is something about the law in almost everything you read. It's just a question of looking for it." Teachers kept up with recent development in law through the law sections of *Time* and *Newsweek*, through newspapers, and through such other magazines as *The Saturday Review*. Much of the time they duplicated the articles for students, or else adapted them for student exercises.

Most of them encouraged students to bring in articles that they had run across. Chuck Thomason builds this into his class by requiring every student to keep a folder of newspaper and magazine articles, with articles filed in the order of the topics in the course syllabus. He adds that almost every topic in his course—for example, why are "victimless" activities considered criminal, can morality be legislated—are reflected in newspaper stories. He gets a classroom set of newspapers once a week, so that exploring law-related news becomes a project for the entire class.

6. Be on the lookout for freebies. Our teachers were able to get a lot of free or inexpensive material from community groups. For example, the League of Women Voters or your state or local bar association may have pamphlets on the judicial system of your state, as well as glossaries of legal terms, pamphlets on the role of lawyers, and examinations of various legal problems.

7. TV is a resource too. Television these days is filled with programs on various law-related topics. Some schools have video tape facilities, so shows can be taped and used as a classroom resource, at least for a time. Other teachers keep their eye out for specials on such subjects as violence, the correctional system, juvenile crime, and other law-related topics. They ask students to watch these and then use them for class-

Teacher-Recommended Resources

What materials did this group of Chicago-area teachers find useful? Here's what they said.

Source Materials

More than half of the teachers we interviewed reported using a law-related source book to gain information about curriculum materials and other resources in the field. *Teaching About the Law* by Ron Gerlach and Lynn Lamprech steered teachers to curriculum materials, showed them some teaching strategies, and helped them find community resources. The book is available for $9.95 from W. H. Anderson Company, 646 Main Street, Cincinnati, Ohio 45201, 513-421-4393.

Several teachers used the curriculum catalogues put out by the ABA's Special Committee on Youth Education for Citizenship. The *Bibliography of Law-Related Curriculum Materials: Annotated, Media: An Annotated Catalogue of Law-Related Audio-Visual Materials*, and *Gaming: An Annotated Catalogue of Law-Related Games and Simulations* describe more than 1,500 curriculum materials in the field and tell you where to order them. The catalogues are available for $1.00 each (or $2.00 for the complete set) from YEFC, 1155 East 60th Street, Chicago, Illinois 60637, 312-947-3960.

A couple of teachers said that the catalogues put out by the Social Studies School Service were helpful. There is a general catalogue, a 4th-8th grade catalogue, and a catalogue specifically on law and justice. The materials described in the catalogues can be ordered directly from the Service. Catalogues are free; write to Social Studies School Service, 10,000 Culver Boulevard, P.O. Box 802, Culver City, California 90230, 213-839-2436.

Texts

Teachers of practical law tend to use either *Street Law* or some of the pamphlets in the *Justice in America* series. *Street Law* is a text featuring nitty-gritty information on criminal law, landlord-tenant law, and four other areas of everyday law. The book is $5.95 a copy for one to nine copies, $5.50 apiece for ten to 99 copies. Contact West Publishing Company, 170 Old Country Road, Mineola, New York 11501, 516-248-1900.

The *Justice in America* series consists of pamphlets on landlord-tenant law, consumer law, youth law, and three other areas of everyday law. The pamphlets are available for $2.76 apiece from Houghton Mifflin Company, Dept. M, One Beacon Street, Boston, Massachusetts 02107, 617-725-5000.

Teachers of courses on the landmark cases of the Supreme Court had praise for the *High School Law Program Attorney's Source Book* and the *Trailmarks of Liberty* series.

The *High School Law Program Attorney's Source Book* is a teacher resource featuring case studies and background readings on freedom of expression, freedom of religion, and many other constitutional areas. The case studies can be reproduced for students. The book is available from the American Bar Association's Young Lawyers Section, 1155 East 60th Street, Chicago, Illinois 60637, 312-947-3854. The price is $7.50.

The *Trailmarks of Liberty* series includes a book for junior high (*Great Cases of the Supreme Court*) and a book for senior high (*Vital Issues of the Constitution*). Both books feature discussions of major constitutional cases and

room discussions and exercises. Some teachers report success with having kids watch and then analyze TV police and detective shows, examining their legal accuracy and considering the law-related issues that they raise.

8. Be on the lookout for unusual sources for materials. Diane Farwick, a teacher offering a unit on consumer education, recommends that you not only look to such sources as *Consumer Reports Magazine*, which has a section on law and the consumer, but seek such out of the way sources as insurance companies and other corporations which put out consumer materials. She also recommends firing off letters to the consumer column of a local newspaper (include a self-addressed, stamped envelope for the reply), and using the resources of student newspapers to explore various consumer questions.

Community Resources

In preparing themselves to teach about law, the teachers we talked to relied heavily on lawyers, judges, law enforcement people, and a host of other community resources. In fact, these professionals were probably the most important source of assistance and encouragement for the teachers.

How did they help? John McKinnon, a teacher at Thornwood High in the Chicago suburb of South Holland, provides a good example of what community resources can do for a teacher.

He began teaching about law 10 years ago when he was asked to take over a business law course. As a brand-new teacher with no background in law, he says the first thing he tried to do was "surround myself with lawyers and judges." They helped him understand many areas of law, provided background materials such as a partial set of the Illinois statutes, made many classroom presentations, and were a vital entree to off-campus activities such as visits to courtrooms, police stations, and prisons. Other teachers have worked closely with lawyers and judges on curriculum development and evaluating classroom materials; some have set up hot-lines to lawyers, so they can get the answers to questions that come up in class within 24 hours.

The teachers suggested many tips on how to reach such people and how to make sure that your presentations work in the classroom.

"You have to look for them," one teacher told us. "There are a lot of them out there, but they won't fall out of the sky." A good time to start this search is Law Day. Get to know the lawyers and judges who come to your school on Law Day, and ask them to help. If they can't do it, ask them to recommend others.

Bar associations are another logical place to start. Phone the bar association in your area and ask for the names of lawyers who may be willing to help. The Law Day and youth education committees will be a good source of interested lawyers, but many other members of the association will probably be willing to help out.

You'll find that the police are almost always eager to help. In suburbs and

(Continued on page 44)

have mock trial scripts and glossaries. The faculty editions of *Great Cases* and *Vital Issues* cost $2.43 apiece; the student edition of *Great Cases* costs $3.24 and the student edition of *Vital Issues* is $3.60. Order from Houghton Mifflin Company at the address given above.

Supplementary Materials

It's hard to pinpoint supplementary materials, since so many of the teachers we talked to create home-grown materials, use articles from newspapers or magazines, and rely on other nonformal sources. However, several teachers told us that they found Xerox's *Public Issues* series helpful. There are more than 20 of these 48-page pamphlets, and several of them focus on law-related topics, including *The Lawsuit: Legal Reasoning and Civil Procedure* ($ .55), *Community Change: Law, Politics, and Social Attitudes* ($ .55), and *Rights of the Accused* ($ .60). You can get information about them from Xerox Education Publications, Attn: Miland Snyder, 2150 Sairwood Avenue, Columbus, Ohio 43216, 614-253-0892.

Another supplementary material that teachers told us about was the *Bill of Rights in Action* (formerly the *Bill of Rights Newsletter*). This publication comes out four times yearly and offers classroom activities and other resources for teachers and students. It often focuses on particular topics such as school integration, women's rights, and moral education. Subscriptions are $4.00 a year, $40.00 a year for classroom sets of 35, and $10.00 for classroom sets of one issue. Contact the Constitutional Rights Foundation, 6310 San Vicente Boulevard, Los Angeles, California 90048, 213-930-1510.

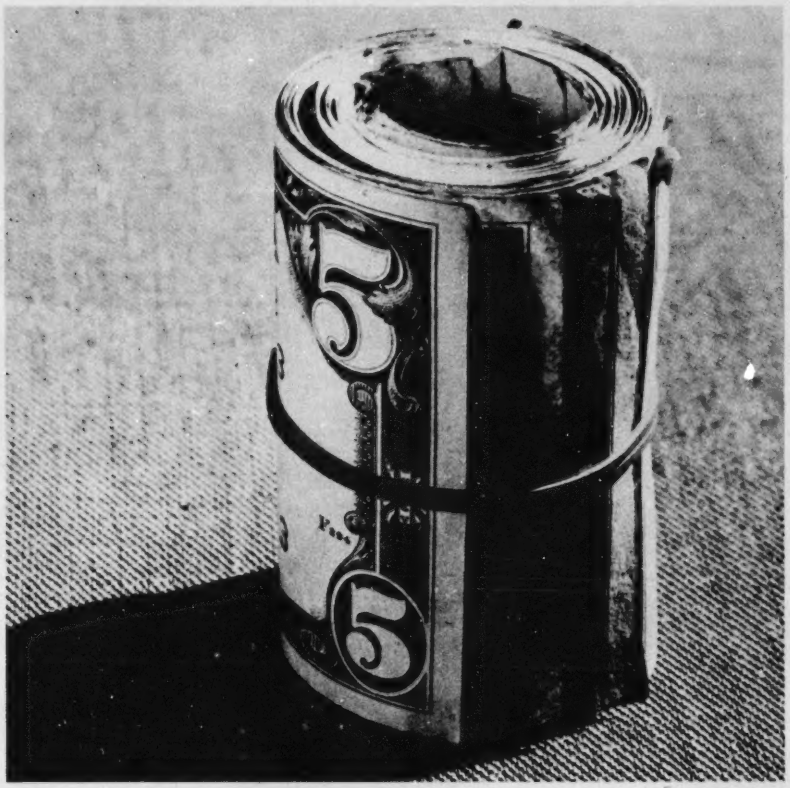
As for a-v, most of the teachers had praise for the Correctional Service of Minnesota. This private agency has a wide variety of posters and a-v materials covering prisons, crime, the courts, and many other aspects of the justice system. Several teachers singled out "Voices Inside," a 16mm film using interviews with prisoners to indicate the deplorable conditions in many prisons. This 28-minute film can be rented for $15.00. If you wish to receive information about this film and the 300 others available from the Correctional Service of Minnesota, write: 1427 Washington Avenue South, Minneapolis, Minnesota 55404, or phone 612-339-7227.

Another a-v resource that some of the teachers use is *Television, Police, and the Law*, a booklet created by Prime Time School TV, and built around commercial TV programs. It provides, for example, suggested questions and charts on how to analyze TV cop shows and other prime time law-related programs. The booklet will be published this fall by Argus Communications. Contact Argus at 7440 Natchez Avenue, Niles, Illinois 60648, 312-647-7800.

More than half of the teachers use mock trials, games, and other simulations. Often, they develop their own mock trial scripts and simulations, but several reported good luck with *Plea Bargaining*, a game of criminal justice, and *Police Patrol*, a simulation designed to give kids insight into a policeman's task. Both games are available from Simile II, 218 Twelfth Street, P.O. Box 910, Del Mar, California 92014, 714-755-0272. *Police Patrol* is $12.50. *Plea Bargaining* can only be purchased in classroom sets. It costs $17.50 for 18 student kits, $25.00 for 35 student kits.

How to Find Money for Your Program

Some federal sources you may not have thought of



Charles White

The federal government's Office of Education (OE) has many programs that could support law-related curriculum development and teacher education. Some, like Title IV-C (described in the Spring, 1977 issue of *Update*) aren't tied to any particular curriculum focus; others do specify a curriculum area.

What is most important is that you don't have to be a powerhouse project to apply for these grants. None of the programs is large by the standards of the Federal Government (only one may have a budget as large as $10 million) and each makes grants to local school districts and institutions of higher education. Every one has its own requirements for funding and its own application deadlines, so contact their directors at the addresses given below.

Consumer Education

To encourage the spread of consumer education for both adults and children, OE has federal grants available to support (1) the development, evaluation, and dissemination of new curricula, (2) the initiation and expansion of consumer education programs in schools and communities, and (3) the training of teachers and other personnel. In each of the last two years, $3.1 million was available under this program, with grants averaging about $45,000. OE's definition of consumer education clearly includes law-related education, since one of the areas explicitly recognized is legal rights, redress, and consumer laws.

Of the 66 grants awarded in fiscal 1976, 28 went to institutions of higher education, 5 went to state education agencies, 5 to local education agencies, and 29 to public and private nonprofit agencies.

For more information, contact Myrtle Bonn, Consumer Education, R.O.B. #3 Room 5624, 7th and D Streets, S.W., Washington, D.C. 20201 (202-245-0636).

Environmental Education

Last year, OE had $3.5 million available to support environmental education programs. Most of these funds went toward general projects, with priority given to (1) curriculum development projects (particularly interdisciplinary ones) intended for one or more grades at the junior and senior high school level, (2) projects by state and local education agencies supporting environmental education in elementary and secondary schools, particularly projects introducing issues in environmental education into the existing curriculum, (3) educational personnel development projects, training teachers from grades 7 through 12, and (4) community education programs on environmental quality, including special programs for adults.

Also available are short-term minigrants for workshops, seminars, symposiums, and conferences. These grants, none of which have exceeded $10,000, assist communities in acquiring an understanding of the causes, effects, and options surrounding local environmental problems.

The whole environmental area is inextricably linked to law. Environmental guidelines and standards are embodied in a multitude of state and federal laws and, more often than not, the recurring issues relating to the environment are before the courts. As a result, law-related education programs in this area would seem like strong candidates for funding.

For further information, contact Walter Bogan, Bureau of School Systems, Office of Environmental Education, F.O.B. #6, 400 Maryland Avenue, S.W., Washington, D.C. 20202 (202-245-9231).

Women's Educational Equity

This program makes grants to promote the equity of women in education. Last year, its $7.2 million made it one of the larger OE programs. State and local education agencies are eligible to apply, as are other public agencies and nonprofit organizations.

Grants have the general purpose of ending sex discrimination and sexual stereotyping. They support projects to (1) develop, evaluate, or disseminate curricula, textbooks, or other education materials, and (2) conduct pre-service or in-service training for educational personnel.

An increasing number of local, state, and federal laws (as well as state and federal constitutional provisions) bear on this area, and the spate of recent equal protection decisions and the controversy over ERA suggest that the law will be more and more important to women's rights. As a result, it seems likely that these monies could support law-related education programs with a special interest in the area.

Last year the program's grants ranged from $35,000 to $175,000, averaging $95,000. In addition, the program provides about 25 small grants, no larger than $15,000 each, to support developing or implementing "innovative approaches to the attainment of equity in education for women."

For further information, please contact Women's Staff, Room 3121, Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202 (202-245-2181).

Teacher Centers

This is a new OE program that is expected to be funded in fiscal year 1978. It recognizes that schools are hiring few new teachers and thus need to improve the quality of in-service training. Teacher centers will serve teachers from both public and nonpublic schools and will undertake developing and producing curricula and providing training to improve teachers' skills. The tentative regulations specify that most of the funds be earmarked for local education agencies, but 10% would go to institutions of higher education for operating teacher centers. Fiscal 1978 funding is expected to be from $5 to $12.5 million.

The tentative regulations of the teacher centers program also indicate that the schools themselves must be a major focus and locale of teacher training, and that the schools—and particularly classroom teachers in those schools—must have the major responsibility for determining the kinds of training and other experiences needed by teachers. In addition, training and curriculum activities must be responsive to the varying needs of state and local areas.

It now appears that most grants will be small. This means that this program may well be ideal for beginning law-related education programs, which often need seed money to develop curricula and train a cadre of teachers. In the tentative regulations, grants may be for as long as three years.

For further information, please contact Allen Schmieder, Room 5652, R.O.B. #3, 7th and D Streets, S.W., Washington, D.C. 20201 (202-245-2235).

Gifted and Talented

OE's Program for the Gifted and Talented funds a wide variety of programs for pre-school, elementary, and secondary students possessing exceptional ability.

The program supports grants to state and local educational agencies for teacher training and the planning, development, operation, and improvement of programs designed to meet the needs of the gifted and talented, including children in non-public schools. It also makes grants to institutions of higher education for leadership personnel training, and supports model projects for the identification and education of specially identified groups of gifted and talented children and youth. In general, the program supports the development of curriculum that goes beyond what is normally provided, instructional strategies to accommodate the unique learning styles of the gifted and talented, and flexible administrative arrangements for instruction both in and out of school, such as independent study, student internships, and field trips.

Law-related education programs could provide a wealth of stimulating and challenging courses for the gifted and talented. In addition, the pervasive impact of the law on all facets of our society suggests that law-related education can foster some especially critical skills for this unique group.

In the next fiscal year, the program expects to have $2.56 million available to fund grant applications. For further information please contact Dorothy Sisk, Director, Gifted and Talented Staff, Office of Education, Room 2006, R.O.B. #3, 7th and D Streets, S.W., Washington, D.C. 20201 (202-245-2482).

Community Education

A lot of law-related programs report that they have begun to offer courses and units for adults in response to adults' interest in learning about law and the legal process. The Community Education program of OE has funds that might support such efforts. In its first year, this new program had $3.5 million to distribute. About $400,000 was available to higher education institutions, with the rest equally divided between local and state education agencies.

The federal government will award grants to support 80% of the cost of a new community education program, 65% of the incremental cost to expand or improve an existing program, and 40% of the cost of maintaining an existing program.

There is no attempt to specify the content of these programs, since the federal government is seeking to fund local efforts which best meet the varying needs of a wide range of communities. However, community education programs must involve a public school in their administration and operation, and must extend the scope and nature of activities, the people served, and the hours of service beyond what is normally offered by the school.

For further information, contact Julie Englund, Community Education Program, R.O.B. #3, Room 5622, 7th and D Streets, S.W., Washington, D.C. 20201 (202-245-0691). □

DISCIPLINE (*Continued from page 6*)

be tailored to the severity of the possible punishment. Thus is seems fair to suggest that in cases of long suspensions or expulsions, students will be entitled to more extensive procedural protections. These might include the right to call and cross-examine witnesses and have representation by counsel, requirements which lower courts have in fact already imposed in cases of this sort (see box which appears below).

The Dissent

On behalf of the minority, Justice Powell wrote a strong dissenting opinion challenging the assumptions and conclusions of the Court. He argued that judges should not interfere with the daily operation of the schools except to protect important constitutional values. "It cannot be seriously claimed," wrote Justice Powell, "that a school principal's decision to suspend a pupil for a single day" directly threatens basic constitutional rights. On the contrary, suspensions are one of the traditional means used to maintain discipline. Therefore, requiring suspensions to be subjected "to the formalities and judicial oversight of due process" would extensively interfere with the functioning of the schools.

Maintaining school discipline and teaching students to understand and obey rules is an essential part of education, Powell continued. Therefore, when a student misbehaves, "he is rendered a disservice if appropriate sanctions are not applied or if procedures for their application are so authority."

Because educators and students have common interests, the dissenters felt it unnecessary and unwise to think of minor school discipline in judicial terms or as an adversary situation. Although innocent pupils might be occasionally suspended, "common sense suggests that they will not be numerous in relation to the total number, and that mistakes or injustices will usually be righted by informal means." In view of the "experience, good faith, and dedication" of our public school staff, the nonadversary means of resolving differences "that always have been available to pupils and their parents" are better for all concerned "than resort to any constitutionalized procedure."

Powell then examined the probable consequence of this decision. Students and parents will increasingly rely on "the judiciary and the adversary process" to resolve many routine school problems, he argued. Courts might now require due process whenever decisions related to grading, promotion, or classroom assignment are challenged. And if hearings are required for a substantial percentage of short-term suspensions, "school authorities would have time to do little else." Justice Powell concluded that the decision will unwisely and unnecessarily substitute the judgment of the federal courts "for that of the 50 state legislatures, the 14,000 school boards, and the 2,000,000 teachers who heretofore have been responsible for the administration of the American public school system."

According to Justice White and the majority, however, the decision does not call for elaborate or time-consuming for-

Prior School Discipline Decisions

Since the Supreme Court has dealt with very few school discipline cases, this issue's *Prior Decisions* includes mainly the rulings of federal district and appellate courts, and of state appellate courts.

West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943)—The case in which compulsory flag salutes in schools were ruled unconstitutional, *Barnette* is a landmark decision in the Court's review of school policy and practices. Teachers and students alike will especially appreciate the substance and eloquence of Justice Jackson's majority and Justice Frankfurter's dissenting opinions.

Consider, for example, these statements by Jackson: "The case is made difficult . . . because the flag involved is our own. Nevertheless, we apply the limitations of the Constition with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds;" as contrasted with Frankfurter's call for judicial self-restraint: "Particularly in legislation affecting freedom of thought and freedom of speech, much which should offend a free-spirited society is constitutional. Reliance for the most precious interests of civilization, therefore, must be found outside of their vindication in courts of law. Only a persistent positive translation of the faith of a free society into the convictions and habits and actions of a community is the ultimate reliance against unabated temptations to fetter the human spirit."

Dixon v. Alabama, 294 F. 2d 150 (1961)—In one of the important early cases establishing due process rights for students, the Court of Appeals set out procedural guidelines for the expulsion of students from a state college, noting that the college's power to expel "is not unlimited and cannot be arbitrarily exercised."

People v. Overton, 24 N.Y. 2d 522 (1969)—New York's highest court upheld the right of a high school vice-principal to search student lockers. "Not only have the school authorities a right to inspect," the court held, "but this right becomes a duty when suspicion arises that something of an illegal nature may be secreted there."

Tibbs v. Board of Education, 276 A. 2d 165 (1971)—Tanya Tibbs was one of several high school students who were expelled on charges of assaulting other students. A New York court ruled that "the expulsions . . . are reversed and set aside for failure to produce the accusing witnesses for testimony and cross-examination" despite threats and other risks involved.

Ouimette v. Bobbie, 405 F. Supp. 525 (1975)—A Vermont district court upheld the suspension of a seventh grade girl who, with the support of her father, refused to attend physical education classes mainly because of her lack of interest in athletics. "As long as the prescribed courses of study do not trench on fundamental rights," the court explained, "the plaintiff's personal con-

malities. For example, there need be no delay between the time notice is given and the time of the hearing. "In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred," White maintained.

In cases of short suspension, the ruling does not require that students be given an opportunity to secure counsel or to call and cross-examine witnesses. But it will reduce the risk of error by alerting the disciplinarian to disputed facts which might lead him to investigate further and perhaps call the accuser and witnesses. Indeed, the procedures required by the Court are "less than a fair-minded school principal would impose upon himself," Justice White noted.

In short, the minimum procedures required by *Goss* can guard against error without prohibitive cost or interference with the educational process. "It would be a strange disciplinary system," observed Justice White, if an educational institution did not try to inform a student of his misconduct and "let him tell his side of the story in order to make sure that an injustice is not done."

To recapitulate, then, *Ingraham* didn't authorize the beating of school children, but it did deny students the protection of the Constitution's Eighth Amendment. Students and their parents will have to rely on criminal laws and civil suits if they feel that corporal punishment is excessive. In *Goss*, however, the Court extended the protection of the Fourteenth Amendment's Due Process Clause to students faced with suspension from school, requiring, under normal circumstances, an explanation of the charges and evidence, and a chance to reply to those charges. But it did not demand full-dress hearings, cross examinations, representation by counsel or many other elements of due process accorded to the criminally accused.

Can anything be done if school officials violate a student's rights? Yes. In another 5-4 decision, the Supreme Court ruled that school officials may be held liable "if they knew or reasonably should have known that the action they took within their sphere of official responsibility would violate the constitutional rights of the students affected." The case was *Wood v. Strickland*, 420 U.S. 308 (1975), and involved two Arkansas students who were expelled without due process for "spiking" the punch at a meeting of a high school extracurricular organization.

What if school officials were simply not aware of the student's rights? The Court responded that an act violating a student's constitutional rights cannot be justified "by ignorance or disregard of settled, indisputable law on the part of one entrusted with supervision of students' daily lives."

The further question of the circumstances under which monetary damages can be awarded will be considered by the Supreme Court this fall in the case of *Piphus v. Carey*, 545 F. 2d 30 (1976). The case involves two Illinois students who were suspended without due process. Although the trial judge found that their constitutional rights had been violated, he refused to award damages because the students failed to prove that the suspension caused them any monetary loss. The court of appeals reversed. It ruled that

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flict with the [school authorities] is beyond the court's reach."

Picha v. Wieglos, 410 F. Supp. 1214 (1976)—Renee Picha, a thirteen year-old Chicago student, and several of her classmates were suspected of possessing drugs. After the arrival of police, they were searched by the school nurse and school psychologist. In a suit against school officials and the police for violation of their civil rights, the district court upheld her "constitutional right not to be searched" under the circumstances of this case and ruled that public officials have no immunity from civil rights liability "when they disregard such settled rights, regardless of [their] knowledge or intent."

Albach v. Odle, 531 F.2d 983 (1976)—The rules of the New Mexico Activities Association impose a one-year ban from interscholastic high school athletic competition for any student who transfers from his home district to a boarding school or from a boarding school to his home district. Albach unsuccessfully challenged the regulation, the district court ruling that "participation in interscholastic athletics is not a constitutionally protected civil right."

Graham v. Board of Education, 419 F. Supp. 1214 (1976)—A seventeen year-old high school student who had an unexcused absence was suspended after he refused to submit either to paddling or serving detention for double the time he was absent from school. In rejecting his due process arguments, the Oklahoma district court noted that "he has had more than ample opportunity to present his views . . . two hearings and one appeal are enough."

Wisch v. Sanford School, 420 F. Supp. 1310 (1976)—Private high school student Cindy Wisch was expelled for smoking marijuana and challenged the school's action in a suit alleging violations of the Fourteenth Amendment's Due Process and Equal Protection Clauses. In rejecting her arguments, the Delaware District Court held that she failed to prove the "state action" necessary to invoke protection of the Fourteenth Amendment, a prerequisite in any case involving private schools.

Sims v. Waln, 536 F. 2d 686 (1976)—As a result of an incident during her detention for violating school rules, Leatha Sims, a sixteen year-old black junior high school student, filed suit charging a violation of her civil rights and discrimination against black students in the application of corporal punishment, and challenging the constitutionality of corporal punishment. The Court of Appeals rejected all of her arguments, holding that the Ohio school's policy of imposing three blows on the buttocks was not constitutionally excessive and finding no violation of the Equal Protection Clause.

Hiel v. Trustees of Indiana University, 537 F. 2d 248 (1976)—A graduate student claimed denial of his Fourteenth Amendment due process rights when he received failing grades in two courses because of alleged plagiarism. "In order to inject the judiciary into what is essentially an intra-university dispute," the court held, "plaintiff must first exhaust his available administrative remedies," which he has not done.

even though no personal injury was shown, the students are entitled to an award which "should be neither so small as to trivialize the right nor so large as to provide a windfall." Whether this becomes the "law of the land" will soon be decided by the Supreme Court.

Issues and Implications

In his article "Reflections on Law Studies in the Schools Today," Isidore Starr comments that "our students, and I suppose many of us too, feel that when the Supreme Court hands down an opinion—that ends the case. I would like to suggest that more often than not, that begins another case." *Ingraham* and *Goss* underscore the validity of his observation. We have already noted the *Carey* case which the Court will decide next term. Many other issues also await resolution.

For example, as a result of *Goss*, should courts or schools require due process for all decisions affecting students? Should students be entitled to a hearing if they fail a course, if they aren't promoted, if they are excluded from athletic activities, or if they are assigned to a school they don't like? What criteria should judges use to make such decisions?

As a result of *Ingraham*, will we see a plethora of civil and/or criminal suits against educators? What standards will courts apply? Are such suits, as Justice Powell suggests, effective deterrents to excessive corporal punishment?

In addition to these legal questions, there are more general issues which won't be directly decided by the courts. For example, the Court seems to be saying that paddling is more serious than suspension. Is a one day suspension more serious than five or more "licks" on the buttocks? What would your students say? Is the controversy stirred up by the *Ingraham* decision related to implicit disagreements as to which of these punishments is more severe or inhumane? For example, many parents who don't spank their children still "suspend" them by sending them to their rooms or otherwise excluding them from activities they are disrupting.

As the Court noted, most of our states allow corporal punishment and most school boards and parents support its use. However, very few educational theorists or psychologists condone this method of discipline. What accounts for these differences? Does corporal punishment, as some psychologists contend, contribute to the formation of docile, dependent, or authoritarian personalities, undermine one's self-concept, and diminish the ability to learn?* Or is it an effective means of maintaining order and instilling respect, obedience, and character, which has been sanctioned by the experiences of generations of parents and children?

We must also explore whether there are constructive alternatives to suspension and corporal punishment that will contribute to students' personal and educational growth. In this regard, it is important to remember the difference be-

*See *Discipline for Today's Children and Youth*, George V. Sheviakov and Fritz Redl, revised by Sybil K. Richardson, Association for Supervision and Curriculum Development, N.E.A., 1201 - 16th Str. N.W., Washington, D.C.; and "Disruptive Behavior in the Classroom", Fritz Redl, *School Review*, Aug., 1975.

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tween legal and educational issues. The Supreme Court and the law of 48 states say that it is permissible to use corporal punishment. But what does this tell us about the educational wisdom of such punishment. Very little. The fact that the law says educators *can* do certain things may not tell us anything about whether we *should* do them. In fact, local school districts in the 48 states authorizing corporal punishment can prohibit it if they wish.

A Classroom Resource

Goss and *Ingraham* also exemplify the kinds of judicial decisions that can be effectively used in the classroom. Through the use of such cases, law studies can start where students are, with lively debates about topics of current interest, and about constitutional issues that are relevant to every public school curriculum. In addition to due process issues, a Bill of Rights unit might include Supreme Court opinions concerning freedom of expression, religion, or association in the schools. Teachers could then examine parallel cases applying the First Amendment to adults in the community. Through this process, students may come to understand why there are legitimate differences in the application of these rights in the public schools and on the public streets.

These cases can also make us conscious of the way schools teach about law through the "hidden" curriculum, that is, through the way schools develop and implement their own policies and regulations. Schools, for example, teach as much about the letter and spirit of the law by the way they administer their disciplinary system as by what they teach in the classroom about due process. If schools preach respect for law, and at the same time violate constitutional rights, they are likely to teach legal cynicism. But when the hidden curriculum complements and reinforces the formal curriculum, students tend to develop a deeper understanding of and commitment to our constitutional system.

Before teachers can instruct about court cases, they have to have reliable information about them. As the publicity surrounding *Goss* and *Ingraham* illustrates, what we read about court decisions in the popular press is often exaggerated, oversimplified, or untrue. Judges are skeptical of hearsay in court. Perhaps educators should be similarly skeptical of hearsay concerning judicial opinions.

Fortunately for teachers, there is a good alternative to the popular press. Supreme Court opinions are written to be read by concerned citizens as well as lawyers, and the full decisions are easy to find in any law library. There are also literally dozens of books which provide excerpts from and reliable discussions of court decisions (see pp. 14 and 15). These cases can constitute a vital resource for the classroom teacher as well as a key tool in the eradication of legal illiteracy in America's schools.

Materials on Student Rights and Responsibilities

The following includes both resource and classroom materials which focus on the legal status of students. This month's *Curriculum Update* (pp. 23-25) also includes some materials on this topic, and the box on p. 14 notes some general materials which contain helpful information.

David Schimmel and Louis Fischer, *The Civil Rights of Students* (1975). This paperback uses the case study approach to investigate the civil rights of students in a variety of areas from freedom of speech to due process. The cost is $5.95; faculty members get a 10% discount. Order from Harper and Row, 10 East 53rd Street, New York, N.Y. 10022.

Richard S. Knight, *Students' Rights: Issues in Constitutional Freedoms* (1974). This paperback, a part of the Analysis of Public Issues Series, focuses on dress codes, freedom of expression, privacy, and due process. The cost is $2.88, $2.16 for educators. Order from Houghton Mifflin, One Beacon Street, Boston, Mass. 02107.

Alan H. Levine, Eve Carey, and Diane Divoky, *The Rights of Students: The Basic ACLU Guide to a Public School Student's Rights* (1973). This paperback, a part of the American Civil Liberties Handbook Series, uses a question and answer format to present information about the rights of students, including First Amendment rights, marriage and pregnancy, school records, and many other areas. The cost is $1.50. Order from Avon Books, 959 Eighth Avenue, New York, N.Y. 10019

Phi Delta Kappan, *The Changing Concept of Student Rights* (1974). This issue of the magazine *Phi Delta Kappan* contains several articles on student rights and includes a sample student code covering discipline, student records, corporal punishment, and many other areas. The cost is $1.00, with a 20% discount for classroom sets. Order from *Phi Delta Kappan*, Box 789, Bloomington, Ind. 47401.

James H. Wise (ed.), *Proceedings—Conference on Corporal Punishment in the Schools: A National Debate* (1977). The theoretical, practical, and legal dimensions of corporal punishment are explored in this pre-*Ingraham* conference booklet. Copies are free. Order from Oliver C. Moles, Educational Equity Group, National Institute of Education, Washington, D.C. 20208.

Charles L. Cutler and Howard J. Schwach, with Michael E. Geltner, *Juveniles and the Law* (1975). This pamphlet, part of the Backgrounds Series, is aimed at upper elementary and junior high students. It discusses juvenile law both within and outside of school. A teacher's guide is provided. The cost is $ .60 (minimum order is 10 copies). Order from Xerox Education Publications, Order Dept., 1250 Fairwood Avenue, Columbus, Ohio 43216.

P. M. Lines (ed.), *The Constitutional Rights of Students: Analysis and Litigation Materials for the Students' Lawyer* (1976). As the title indicates, this manual on the legal rights of students is more appropriate as a teacher resource than as classroom material. It covers First Amendment rights, disciplinary cases, and problems arising under the Equal Protection Clause. The cost is $7.00. Order from the Harvard Center for Law and Education, 6 Appian Way, 3rd floor, Cambridge, Mass. 02138.

Ron Anson and Peter Kuriloff (eds.), *Students' Rights to Due Process Under Goss and Wood* (1975). A paperback that contains articles and panel discussions raising many questions about the implications of the Supreme Court decisions. Several lawyers who participated in the cases offer their positions in the book. The cost is $9.95. Order from Capitol Publications, Inc., 2430 Pennsylvania Avenue, N.W., Washington, D.C. 20037.

BRIEFS (*Continued from page 10*)

found a substance which was later determined to be heroin. The envelopes were then resealed and delivered under surveillance to their original destination, Washington, D.C. As a result, Charles Ramsey and James Kelly were arrested, tried, and convicted to a term of ten to thirty years. They appealed their convictions on the basis that the evidence against them was secured in violation of the Fourth Amendment's protection against unreasonable searches and seizures.

Justice Rehnquist delivered the Court's opinion. He first noted that federal regulations, based upon an 1866 statute, explicitly authorize inspection of envelopes (although it forbids reading of any correspondence) and that the Court has traditionally recognized the border search exception to the Fourth Amendment. He failed to see any distinction based upon the mode of transportation across our borders and felt that the inspection hardly chills the exercise of free speech. "Any chill that might exist under these circumstances," he said, "may fairly be considered not only 'minimal,' but also wholly subjective."

Justice Stevens, with Justices Brennan and Marshall, dissented. Pointing out that only since 1971 had the Department of the Treasury and the Post Office Department asserted their right to inspect international mail—"under the earlier practice which had been consistently followed for 105 years, customs officials were not allowed to open foreign mail except in the presence, and with the consent, of the addressees, unless of course, a warrant supported by probable cause had first been obtained"—he offered a number of reasons why Congress did not authorize the type of search conducted in this case.

He first argued that throughout our history Congress has respected the individual's interest in private communication. The legislative history unambiguously demonstrates, he contended, that examination of the mails was not authorized by the 1866 Act and the word "envelope" in the statute was not intended to include ordinary letters. He pointed to the 105 years during which the statute had operated under a probable cause interpretation and indicated that the Court should not suggest a different doctrine without a clear mandate from Congress: "If the government is allowed to exercise the power it claims, the door will be open to the wholesale, secret examination of all incoming international letter mail. No notice would be necessary either before or after the search. Until Congress has made an unambiguous policy decision that such an unprecedented intrusion upon a vital method of personal communication is in the Nation's interest, this Court should not address the serious Constitutional question it decides today."

"... the door will be open to the wholesale, secret examination of all incoming international mail," Stevens warned.

Footlocker Search Held Illegal

The suspicion of Amtrak officials in San Diego was aroused when Gregory Machado and Bridget Leary loaded a brown footlocker onto a Boston-bound train. The trunk was unusually heavy for its size and was leaking talcum powder, a substance often used to mask the odor of marihuana or hashish. Because Machado also matched a profile used to spot drug traffickers, the officials informed San Diego federal agents of these events; they in turn contacted their counterparts in Boston.

When Machado and Leary arrived in Boston, narcotic agents and a police dog trained to detect marihuana were waiting for them. Without arousing attention, the dog was released near the footlocker and signaled the presence of marihuana. Machado and Leary were subsequently joined by Joseph Chadwick and they were all arrested, and the footlocker seized, just before they were about to drive away. An hour and a half later, without securing a search warrant, the agents opened the footlocker.

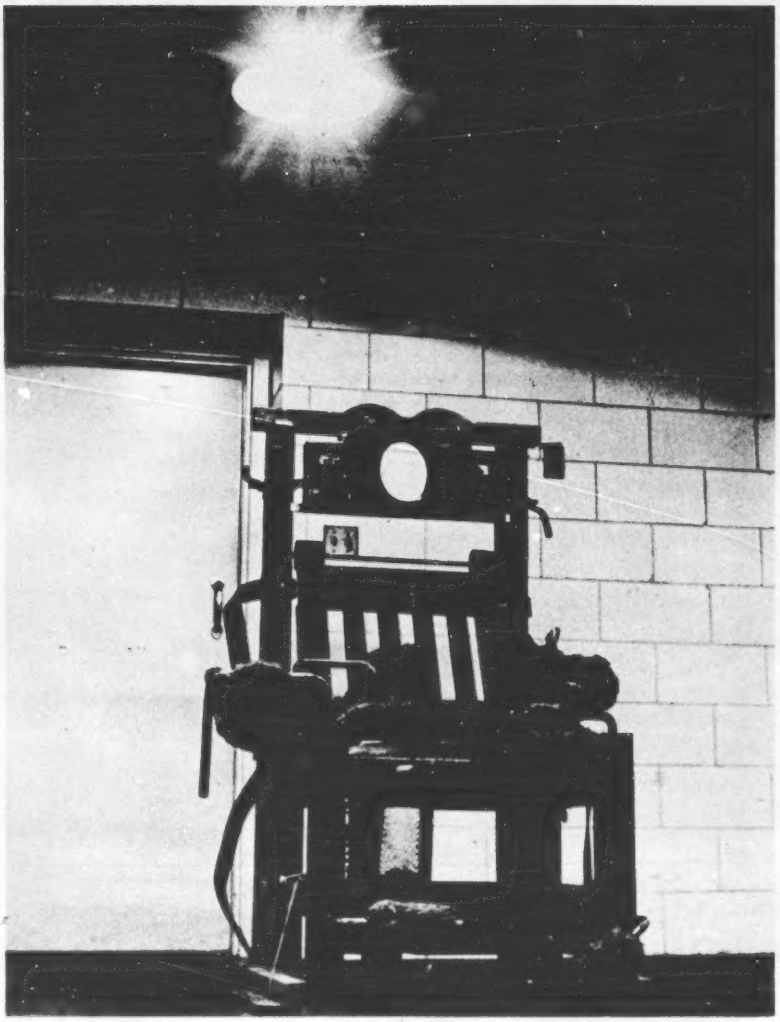
At their trial, the defendants argued that the evidence from the footlocker was secured in violation of the Fourth Amendment's warrant requirement and could not be introduced into evidence. The District Court and Court of Appeals upheld their contention, and the government appealed to the Supreme Court.

In the case of *U.S. v. Chadwick*, 45 U.S.L.W. 4787 (June 21, 1977), the Court affirmed the lower courts' rulings. Rejecting the government's argument that personal effects seized outside the home could be searched without a warrant if probable cause existed, Chief Justice Burger reminded the government that the Fourth Amendment "protects people, not places."

Burger also rejected the government's argument that this was a search incident to an arrest, a well-known exception to the warrant requirement. "When a custodial arrest is made, there is always some danger that the person arrested may seek to use a weapon, or that evidence may be concealed or destroyed. To safeguard himself and others, and to prevent the loss of evidence, it has been held reasonable for the arresting officer to conduct a prompt, warrantless search of the arrestee's person in the area within his immediate control," Burger explained. "Here the search was conducted more than an hour after federal agents had gained exclusive control of the footlocker and long after the respondents were securely in custody; the search therefore cannot be viewed as incidental to the arrest or as justified by any other exigency."

Justice Blackmun, whom Justice Rehnquist joined in dissent, chided the government for seeking a reversal "primarily to vindicate an extreme view of the Fourth Amendment that would restrict the protection of the Warrant Clause to private dwellings and a few other high privacy areas." Blackmun believed, however, that a warrant should not be required "to seize and search any movable property in the possession of a person properly arrested in a public place." He doubted whether such a holding would seriously diminish the values protected by the Fourth Amendment, and concluded, "it is decisions of the kind made by the Court today that make criminal law a trap for the unwary policeman and distract from

the important activities of detecting criminal activity and protecting the public safety."



Death Penalty Laws Overruled

While *Furman v. Georgia*, 408 U.S. 238 (1972), may not be a familiar case name to most Americans, its ruling was one of the most controversial of the recent past, for it held that the imposition of the death penalty constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. What many people did not realize, however, was that the case did not outlaw capital punishment per se. Only Marshall and Brennan, two of the five Justices who constituted the five-judge majority, argued that the Eighth Amendment prohibits the death penalty under all circumstances. The other members of the majority, Justices Douglas, Stewart, and White, seemed more concerned that the manner of its imposition contravened equal protection principles—that the states had employed it randomly, and all too often against poor and minority defendants. The dissenting justices, each of whom wrote separate opinions, argued that whatever their personal view of the morality and effectiveness of the death penalty, it was not contrary to the Constitution.

In light of these factors, states subsequently began drafting new laws that might overcome the constitutional objections set forth in *Furman*. In June, the Court handed down rulings on several such laws in the cases of *Roberts v. Louisiana*, 45 U.S.L.W. 4584 (June 6, 1977) and *Coker v. Georgia*, 45 U.S.L.W. 4961 (June 29, 1977), which limited, but did not outlaw, the imposition of the death penalty.

Roberts involved a Louisiana statute which imposed a mandatory death sentence on those convicted of the first degree murder of a police officer engaged in the performance of his lawful duties. The Court, in a Per Curiam decision, invalidated the Louisiana statue, saying, "Consideration of the character and record of the individual offender and the circumstances of a particular offense [is] a constitutionally indispensable part of the process of inflicting the penalty of death." While noting the special need to protect police officers, the Court pointed out that one could not assume that there were no mitigating circumstances in every case in which a police officer was killed.

Chief Justice Burger and Justices Blackmun, White, and Rehnquist dissented. In his dissent, Rehnquist noted that even assuming the character of the accused must be considered under the Eighth Amendment, he could not believe that a state is constitutionally forbidden to determine that the premeditated murder of a peace officer conclusively establishes the propriety of the death penalty for those convicted of such a crime.

In *Coker*, the Court held that the death penalty could not be imposed for the crime of rape when the victim is an adult. The case involved Ehrlich Coker, who, while serving time for murder, rape, kidnapping, and aggravated assault, escaped from prison and subsequently committed rape as well as kidnapping and theft during the course of an armed robbery. Under Georgia law, the death penalty could be imposed in a capital case if one of the following aggravated circumstances were present: (1) that the accused had been previously convicted of a capital offense; (2) that the rape was committed during the course of another capital felony; or (3) the rape was "outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or aggravated battery to the victim." The jury found the first two circumstances to exist and imposed the death sentence on Coker.

Speaking for the six-judge majority, Justice White held that the Eighth Amendment not only prohibits "barbaric" punishments, but also those which are excessive in relation to the crime committed. In determining whether the punishment could be considered excessive, White referred to the

fact that Georgia is the only state authorizing the death sentence for the rape of an adult victim, and that since 1973 Georgia juries did not impose the death penalty in nine out of ten rape convictions. Although "we do not discount the seriousness of rape as a crime" or its serious impact upon the victim, White contended, "we have the abiding contention that the death penalty which is 'unique in its severity and revocability' is an excessive penalty for the rapist who . . . does not take human life."

Brennan and Marshall filed concurring opinions in which they reiterated their contention that the death penalty is in all circumstances constitutionally prohibited cruel and unusual punishment.

Chief Justice Burger, joined in dissent by Justice Rehnquist, questioned the breadth of the Court's decision which, Burger argued, "appears to be that the death penalty may be properly imposed only as to crimes resulting in the death of the victim." Noting that the majority decision acknowledged that other than homicide, rape is the "ultimate violation of self," Burger could not understand, no matter what the individual Justices may think of the wisdom of capital punishment, how the Court could deprive state legislatures from making the "solemn judgement" to impose such a penalty for the crime of rape.

Burger also noted the severe impact of rape on a woman. "A rape not only violates a victim's privacy and personal integrity," he maintained, "but inevitably causes serious psychological as well as physical harm in the process. The long-range effect upon the victim's life and health is likely to be irreparable; it is impossible to measure the harm which results."

An interesting, unwritten dimension of the case is its relation to sex and racial discrimination. Several women's groups filed briefs against the imposition of the death penalty in this case, arguing that in many cases the death penalty inhibited jurors from convicting those accused of rape. They also contended that the death penalty reflected the view of women as property of men, and of rape as a crime against the man's property rather than against the woman. Other briefs filed in *Coker* contended that blacks constituded the overwhelming number of those executed for rape and that few, if any, persons have been executed for the rape of a black woman.

Desegregation: Court Rules Yes and No

Does the mere existence of all-white or all-minority student populations constitute a violation of the Fourteenth Amendment? No, said a unanimous Court (Justice Marshall not participating) in *Dayton Board of Education v. Brinkman*, 45 U.S.L.W. 4910 (June 27, 1977). Racial segregation must be proven to have resulted from intentional actions by boards of education to be declared unconstitutional. Moreover, evidence of particular instances of discrimination does not justify sweeping desegregation plans.

The case, which reached the Court after five years and two round trips through the lower federal courts, involved a plan requiring the racial distribution of each school in Dayton to be brought within 15% of the 48%-52% black-white population of the city. The plan employed such desegregation techniques as pairing schools, redefining

Other Decisions of Note

Abood v. Detroit Board of Education, 45 U.S.L.W. 4473 (May 23, 1977) —A unanimous Court ruled that the agency shop provision of a collective bargaining agreement, under which non-union local government employees had to pay a service charge equal to union dues as a condition of employment, did not violate their First Amendment rights. The Court explained, however, that this ruling only encompassed the union's non-ideological activities, such as bargaining, contract administration, and grievance procedures, and that non-union members were entitled to refunds for political contributions and other union expenditures unrelated to collective bargaining activities.

Wolman v. Walter, 45 U.S.L.W. 4861 (June 24, 1977)—In an eight-part opinion in which each justice concurred and dissented in various parts, the Court upheld an Ohio statute which authorized the state to provide non-public school pupils (more than 96% of whom were in sectarian schools) with the same texts, tests, and scoring services as used in public schools, as well as speech, hearing, and psychological diagnostic services by public employees. The Court ruled, however, that the statute's provisions which authorized the state to supply non-public schools with the same instructional supplies, equipment, and field trip transportation violated the First Amendment's Establishment Clause. The Court reasoned that texts, tests and services could not usually be used for sectarian purposes while the supplies and equipment could more easily be applied to such use.

Dothard v. Rawlinson, 45 U.S.L.W. 4888 (June 27, 1977)—A divided Court held unconstitutional an Alabama law requiring state prison guards to be at least five feet, two inches tall and weigh at least 120 pounds, on the grounds that it violated the Fourteenth Amendment's Equal Protection Clause. It did, however, uphold a regulation which bars female guards from "contact" jobs in a maximum security, all-male penitentiary, since that regulation was legitimately related to the nature of the job.

Jones v. North Carolina Prison's Labor Union, 45 U.S.L.W. 4820 (June 23, 1977)—The Court upheld the constitutionality of state prison regulations forbidding inmates from recruiting other prisoners for membership in a prisoner's labor union, as well as prison officials' refusal to deliver bulk mailings concerning union activities. The Court argued that these regulations violate neither the First nor Fourteenth Amendments since they are related to legitimate concerns about prison operation and security.

U.S. v. Lovasco, 45 U.S.L.W. 4627 (June 9, 1977)—With only Justice Stevens casting a dissenting vote, the Court ruled that the government's 17-month delay in seeking an indictment against a federal firearms defendant, two of whose potential witnesses died

attendance zones, and establishing magnet schools.

Overruling the plan, Justice Rehnquist wrote, "It is clear ... that Dayton is a racially mixed community, and that many of its schools are either predominantly white or predominantly black. This fact, without more ... does not offend the Constitution."

The Court sent the case back to the district court to "make new findings and conclusions as to violations in light of this opinion." Rehnquist cautioned, however, that "only if there has been a systemwide impact may there be a systemwide remedy."

While the *Brinkman* case might be interpreted as a limitation upon the Court's discretion in desegregation cases, a companion case decided on the same day, *Milliken v. Bradley* 45 U.S.L.W. 4873, clearly strengthens judicial discretion in fashioning remedies in this area. In *Bradley*, a unanimous Court upheld a district court directive that the State of Michigan institute remedial and compensatory educational programs (in reading, testing, counseling, and inservice training) for students subjected to past acts of intentional segregation, and that it bear one-half of the cost necessary to implement such programs.

Chief Justice Burger's majority opinion first summarized the history of the case and reviewed the Court's guidelines in determining judicial remedies in desegregation cases. He noted that (1) "the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation; (2) the decree ... must be designed as nearly as possible 'to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct;'" and (3) in devising a remedy, the federal courts "must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution."

Burger then pointed out that the state's main challenge concerned the scope of the lower court's decree—" ... petitioners claim that, since the constitutional violation found by the district court was the unlawful segregation of students on the basis of race, the court's decree must be limited to remedying unlawful pupil assignments"—but he rejected this contention. "Pupil assignment alone does not automatically remedy the impact of previous, unlawful educational isolation," Burger explained. "The root condition shown by this record must be treated directly by special training at the hands of teachers prepared for that task."

Three Anti-Abortion Laws Upheld

After the Supreme Court's 1973 decision in *Roe v. Wade*, 410 U.S. 113, holding that laws prohibiting abortions were unconstitutional, opponents began to push for laws that would prevent public agencies from performing non-therapeutic abortions or supporting them with public funds. Since a substantial percentage of all abortions are supported in some way with public funds, they believed that this would significantly lower the incidence of abortions. On June 30, the Court held that three such laws were constitutional.

In *Beal v. Doe*, 45 U.S.L.W. 4781, the Court held that Title XIX of the Social Securities Act, which establishes Medicaid, does not require states to pay

during that time, did not justify dismissal of the indictment under the Fifth Amendment's Due Process Clause.

Nyquist v. Mauclet, 45 U.S.L.W. 4655 (June 13, 1977)—In a five to four decision, the Court held that a New York statute which barred resident aliens from state financial assistance for higher education unless they applied for, or planned to apply for U.S. citizenship, violated the Fourteenth Amendment's Equal Protection Clause.

Trimble v. Gordon, 45 U.S.L.W. 4385 (April 26, 1977)—By a narrow five to four margin, the Court held unconstitutional, on the basis of the 14th Amendment's Equal Protection Clause, an Illinois law which allowed illegitimate children to inherit only from their mother when a parent died without a will, while allowing legitimate children to inherit from both parents under such circumstances. Justice Rehnquist wrote a concise and biting dissent in the case, describing the Equal Protection Clause as "one of the majestic generalities of the Constitution," reviewing the history of the Clause, and calling upon the Court to stop conducting a "school for legislators" by telling them how to better carry out their responsibilities.

Trans World Airlines v. Hardison, 45 U.S.L.W. 4672 (June 16, 1977)—The Court, in a seven to two decision, held that TWA had not violated Title VII of the 1964 Civil Rights Act when it was unable to accommodate an employee whose religious beliefs prevented him from working on Saturdays. The Court explained that TWA had made reasonable efforts to accommodate such needs but was stymied by the seniority provision of its agreement with the union.

International Brotherhood of Teamsters v. U.S., 45 U.S.L.W. 4506 (May 31, 1977)—Even though a legitimate seniority system may perpetuate past discrimination, a seven-judge majority held that employers may, consistent with Title VII of the Civil Rights Act, continue that system as long as there is no evidence of discriminatory intent. In effect, the decision seems to reflect the Court's unwillingness to penalize white workers for prior discriminatory practices of their employers, and the decision may provide a hint as to how the Court will rule in the *Bakke* case (see *On the Docket* on page 43).

Carey v. Population Services International, 45 U.S.L.W. 4601 (June 9, 1977)—"There is substantial reason for doubt whether limiting access to contraceptives will in fact substantially discourage early sexual behavior," Justice Brennan wrote in overturning a New York law which made it a crime to sell contraceptives to anyone under sixteen. The Court also held the law's prohibition against anyone except pharmacists selling contraceptives and its blanket ban against advertising or displaying contraceptives to be a violation of the rights of privacy and free speech.

for abortions which are not medically necessary but are rather the choice of the pregnant woman. Justice Powell delivered the Court's opinion in *Beal*. "Although serious statutory questions might be presented if a state Medicaid plan excluded necessary medical treatment from its coverage," Powell explained, "it is hardly inconsistent with the objectives of the Act for states to refuse to fund *unnecessary*—though perhaps desirable—medical services." He emphasized, however, that a state may provide such coverage if it so desires.

Justice Powell also delivered the Court's opinion in *Maher v. Roe*, 45 U.S.L.W. 4787, holding that a Connecticut welfare regulation which permits Medicaid benefits for pregnancy and child-birth, but not for medically unnecessary abortions, does not violate the Equal Protection Clause. In *Maher*, Powell first distinguished between the present case and *Roe v. Wade*. Whereas the statute in *Roe* "imposed severe criminal sanctions on the physicians and other medical personnel who performed abortions, thus drastically limiting the availability and safety of the desired service," Powell noted, "the Connecticut regulation places no obstacles—absolute or otherwise—in the pregnant woman's path to an abortion." Powell acknowledged, however, that poverty "may make it difficult—and in some cases, perhaps, impossible—for some women to have abortions..."

The third case, *Poelker v. Doe*, 45 U.S.L.W. 4794, involved a policy directive by St. Louis Mayor John H. Poelker that city hospitals perform abortions only when there is a threat of grave injury or death to the mother. A Per Curiam decision held that this constituted no constitutional violation for the reasons set forth in *Maher*.

Justices Blackmun (who wrote the opinion for the seven-judge majority in *Roe v. Wade*), Brennan, and Marshall dissented in all three cases, declaring the Court's decisions contrary to the holding in *Roe* and a denial of equal protection. This disagreement was perhaps most vividly expressed by Justice Blackmun in *Beal* when he observed, "Implicit in the Court's holding is the condescension that [the indigent woman] may go elsewhere for her abortion. I find that disingenuous and alarming, reminiscent of 'let them eat cake.' "

While there will doubtless be further Court rulings in this area, at the time this article was prepared Congress was about to vote on whether federal funds could be used for elective abortions. *The New York Times* reported that the debate over this issue was unusually bitter and personal. The *Times* said that Utah Senator Orrin G. Hatch told Illinois Senator Charles H. Percy, supporter of federal funds for abortions, "The only persons who argue for abortion are those who are already born." Recalling that Mr. Percy's parents had been poor, he said, "You might not be here if your views were accepted 57 years ago." Shortly thereafter, Indiana Senator Birch Bayh observed "a remarkable parallel" between those who opposed abortion and those who, by voting against housing, education, and rat control "do not [show] the same degree of sensitivity for the quality of life after birth."

Powell acknowledged that poverty "may make it difficult—and in some cases, perhaps, impossible—for some women to have abortions . . ."

U.S. Gains Control over Nixon Papers and Tapes

In another unprecedented chapter in the events surrounding Richard Nixon's presidency, the Supreme Court upheld the Presidential Recordings and Preservation Act which gave the U.S. control over 42 million documents and 880 tape recordings accumulated during Nixon's terms of office. The Court, by a seven to two margin, held that Nixon was "a legitimate class of one" requiring special treatment in order to avoid possible destruction of the materials.

The case, *Nixon v. Administrator of General Services*, 45 U.S.L.W. 4917 (June 28, 1977), involved a series of events immediately following Nixon's resignation. On September 8, 1974, the Administrator of General Services, Arthur Sampson, entered into an agreement with Nixon under which Nixon basically retained "all legal and equitable title to the materials" which were to be housed in a federal facility near Nixon's California home. While Nixon agreed not to remove any originals for three years, he had the right, after that time, to withdraw any and all materials at his discretion.

Tape recordings were treated separately in the agreement. While they were to be donated to the U.S. as of September 1, 1979, they could be destroyed if Nixon so requested prior to that time, and, in any event, "were to be destroyed at the time of [his] death or September 1, 1984, whichever event shall occur first." Otherwise, the tapes were not to be removed and reproductions could be made only by "mutual agreement."

On September 18, 1974, a bill was introduced in the Senate to overrule the Nixon-Sampson agreement. Passed by Congress on December 9 and signed into law by President Ford on December 19, the new Presidential Recordings and Materials Preservation Act directed the Administrator of General Services to retain complete possession and control over Nixon's materials and tapes, prohibited destruction of the tapes and materials, and made them available for judicial proceedings. The Act also enabled executive agencies and departments to have access to the materials, which were to be kept in Washington, and directed the Administrator to prepare regulations governing public access to the materials.

Nixon argued that the Act violated five principles and guarantees of the Constitution: the principle of separation of powers, the presidential privilege, his privacy interest, his First Amendment association rights, and the Bill of Attainder Clause. Writing the opinion of the Court, Justice Brennan rejected each of these challenges.

Brennan first dismissed the arguments that the Act violated the principle of separation of powers. Brennan noted that not only have Presidents Ford and Carter rejected this claim, but the Act insures that control over the material remains in the Executive Branch. Nixon's argument, he said, rests upon an "archaic view of the separation of powers as requiring three air tight departments of government."

Turning to the question of whether presidential privilege shields these materials from archival scrutiny, the court noted that unlike the 1974 case of

United States v. Nixon, 418 U.S. 683, where there was a claim of absolute presidential privilege as against the Judicial Branch, "this case initially involves [Nixon's] assertion of a privilege against the very Executive Branch in whose name the privilege is invoked." The Court also dismissed the contention that the potential disclosure of communications given to Nixon in confidence would adversely affect the ability of future presidents to obtain the kind of advice necessary for effective decision-making. The Act contains safeguards to prevent disclosure of confidential presidential materials, Brennan said, and neither President Ford nor President Carter regard the Act as an obstacle to presidential decision-making.

Because of the "unblemished record for discretion" of the government archivists, as well as the protections built into the Act, the Court likewise rejected Nixon's privacy and First Amendment arguments.

Finally, Nixon had argued that the Act was in fact a Bill of Attainder—a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without giving him the protections of a judicial trial. After determining that this case involved no punishment traditionally judged to be prohibited by the Bill of Attainder Clause, Brennan asserted that the legislative background of the Act, as well as the Act's many provisions which protect Nixon's interests, established its non-punitive purpose.

Calling the Court's holding "a grave repudiation of nearly two hundred years of judicial precedent and historical practice," Chief Justice Burger issued a critical 41-page dissenting opinion.

In his dissent, Burger first discussed the separation of powers issues. "Separation of powers is in no sense a formalism," he said. "Each branch of government [must] be free from the coercive influence of the other branches." Burger believed that the Act violated separation of powers principles because it involved the "coercive influence" by the legislature over the presidency and "intruded into the confidentiality of Presidential communications protected by the constitutionally based doctrine of Presidential privilege."

Burger also rejected the Court's arguments regarding the privacy and Bill of Attainder issues. Intrusion of the sort permitted by the Act "must be subjected to the most searching kind of judicial scrutiny," Burger said, and this Act does not meet that test. The fact that Congress singled Nixon out for special treatment, Burger argued, does not support the validity of the "legitimate class of one" rationale, but rather solidifies the contention that the Act is a Bill of Attainder. "This result," Justice Rehnquist added in his dissent, ". . . will daily stand as a veritable sword of Damocles over every succeeding President and his advisors . . . "

Justices White, Blackmun, Powell and Stevens each wrote concurring opinions in which they stressed the uniqueness of this case. Justice Stevens considered two factors unmentioned in Brennan's opinion to be especially relevant: that Mr. Nixon had resigned from office under "unique circumstances," and that he had accepted a pardon for offenses committed while in office. □

On the Docket

Missouri v. Horowitz, 538 F. 2d 1317 (1976)—As a result of failing a course, Charlotte Horowitz was dismissed from the University of Missouri-Kansas City Medical School. The Court will determine whether she was entitled, pursuant to the Fourteenth Amendment's Due Process Clause, to notice of charges and a hearing prior to her dismissal.

Bakke v. Regents of the University of California 553 P. 2d 1152 (1976)—In 1973 and 1974, Allan Bakke, a white applicant to the University of California at Davis Medical School, was denied admission even though he had higher credentials than many of the 16 minority students admitted under a special admissions program. Does the special admissions program violate the Fourteenth Amendment's Equal Protection Clause since it affords preference on the basis of race?

Parham v. J. L., 45 U.S.L.W. 2421 (1976)—A Georgia statute authorizes parents or guardians to voluntarily commit children under eighteen to mental hospitals without affording them a prior opportunity to be heard. Does the statute violate the Fourteenth Amendment's Due Process Clause?

U.S. v. Ceccolini, 542 F. 2d 136 (1976)—A police officer conducted a constitutionally illegal search by examining the contents of an envelope, thus learning the identity of a key witness. Should the witness' testimony be excluded because it is the result of an illegal search?

Bordenkircher v. Hayes, 547 F. 2d 42 (1976)—A prosecutor bargained for a plea of guilty by threatening to bring an additional indictment if the accused did not accept. The Court will decide whether such action violated defendant's due process rights.

Santa Clara Pueblo v. Martinez, 45 U.S.L.W. 3745 (1976)—Women members of a New Mexico Indian community who are married to non-members challenged an Indian ordinance denying membership to the children of female-line mixed marriages while admitting offspring of male-line mixed marriages. Among the issues to be determined by the Court on appeal are whether the federal courts have jurisdiction over such controversies, and if so, what legal standards of equal protection should be applied.

Landmark Communications v. Virginia, 45 U.S.L.W. 2430 (1977)—A newspaper was convicted and fined $500 for publishing an article concerning possible disciplinary proceedings against a particular judge, since the article violated a state law requiring confidentiality of judicial inquiries. The Court will decide whether the statute is unconstitutionally vague and overbroad, and whether the First Amendment protects newspapers from being punished for publishing truthful statements about a public official.

McDaniel v. Paty, 45 U.S.L.W. 2445 (1977)—Tennessee has a constitutional prohibition which makes ministers and priests of any denomination ineligible to serve in state legislatures. The prohibition was subsequently applied to prevent a priest from serving as a delegate to a state constitutional convention. The Court will decide whether such prohibitions violate the First Amendment's Free Exercise Clause and the Fourteenth Amendment's Equal Protection Clause.

INTERVIEW

(*Continued from page 31*)

small towns, our teachers recommend calling the police chief. Janice Berman, a teacher at New Trier High School in suburban Northfield, says that lots of times the chiefs will come themselves. If they can't, they will almost always send someone, because they recognize that better community relations and respect for law begin in the classroom. In larger cities, our teachers had good luck calling the juvenile department, the community relations department, or the preventive programs department.

To get the help of judges, our teachers suggest that the direct approach is best. If you don't know a judge, just phone a court, explain what your course is about, and ask the judge to come at a time that is convenient.

Don't forget the clients of the system. Several of our teachers have recruited classroom speakers from ex-offenders organizations. There are many of these groups in most urban areas, and our teachers recommend contacting them either through parole and probation offices, or through civic organizations such as the League of Women Voters and church groups.

In general, it pays to be creative. Charles Kuner spotted a potential resource when he saw the author of a book on police interviewed on television. He just called up the station, got the man's phone number, and recruited him for a classroom presentation. He also recommends that you use graduates of the school as a resource. Two or three Farragut High grads who are now lawyers have provided a great deal of assistance. Janice Berman found a great classroom resource through a teacher at her school whose husband is a Chicago policeman. He now comes into the class at least once every semester. Charlie Hart took a tour of a state penitentiary with his church group, and while there got to know an assistant warden who has spoken to his class on several occasions.

Marion Cobb recommends that you call your state representative's office for the names of lawyers and others who may be resources. She also suggests that you make up a brief form that asks students to list lawyers, judges, police, and others who may be relatives or friends of the family.

As these examples show, the key is not to be shy. Janice Berman says "I'm usually an introverted person, but when it comes to getting a resource for my students I'm extroverted. If we're on a field trip and I see a lawyer who seems to be doing a good job, I just walk up to him and ask him for his card and tell him that I hope he'll be able to come to speak to my students. Sometimes it takes two or three calls, but when they come they almost always like it so much that they'd be offended if I didn't ask them for the next semester." And remember that contacts lead to contacts.

The point of it all is to explore their feelings, and to make them seem more human to students.

Always ask a resource person to recommend others. Even the ones that can't help may recommend others who can.

One last bit of advice about scheduling classroom presentations. Remember that resource people are apt to be very busy, so be as flexible as you can in working them into your schedule. And resource people often have to cancel at the last minute, so it's a good idea to have another lesson or activity planned on the topic they were to discuss.

Of course, getting them to come is only the beginning. How do you make sure that the experience is educationally rewarding? Our teachers are unanimous in recommending that teachers carefully prepare both the resource person and the class.

The resource person has to know what the class has been studying, how his presentation fits into the course of study, and what sorts of questions to anticipate. One way to do this is on the phone, or failing that, in a brief meeting before class. Another possibility is to ask students what they'd like to learn from the presentation and then send the resource person a list of possible questions ahead of time.

Either way, it's essential to get them away from canned presentations. Charlie Hart says that police who come to his class are sometimes timid and uncertain, and want to "hide behind the films they've brought with them." He recommends that their formal presentation be held to 10 or 15 minutes, and cover such basic processes as arrest procedures and rights of the accused, with the rest of the period open for questions.

Chuck Thomason carries this one step further by involving resource persons in classroom activities. The key, he says, "is that we don't treat them as experts who are bringing us the one true word, but rather as human beings who can both contribute to the class and learn from it. We want them, above all, to be people."

To do that, Thomason involves them in role-playing, trying to place them in roles different from those they play in real life. Therefore, ex-offenders might play policemen or prison guards, while cops might play prisoners or persons who have been arrested. The point of it all is to explore their feelings about the system, and to make them seem more human to students.

Another technique is the human graph, asking resource people and students to take a position pro or con or somewhere in-between on a controversial question such as "the main purpose of prisons is to punish." After arguments on each side of the issue, people on the graph are allowed to change their position and explain why. Thomason also recommends encouraging students to ask questions which get at how resource leaders feel about what they do. For example, almost all students want to ask lawyers what it feels like to defend someone who they know is guilty.

That raises the question of how to prepare students so that they can make the most of the experience. Thomason makes the basic assumption that good students don't just sit there and passively absorb information, but rather are active participants in the learning process. It's up to them to make the resource person's presentation worthwhile, and if they don't think about what they want to learn in advance and come up with some good questions, then they know that they'll be responsible for a flat session. One way to help students prepare is to have them conduct an opinion survey about a controversial topic such as capital punishment. The responses to this survey are then compared and analyzed, and students get an idea of the wide range of opinions and

the complexity of the problem. When the community resource person comes into the classroom, students should have a lot of questions that they'd like to have answered.

Charlie Hart uses a slightly different technique. He runs through possible questions with his students before the presentation, but he asks them not to write the questions down in advance, because he wants to avoid a canned response as much as a canned presentation. If the questions that have been suggested interest students, they'll ask them at some point or another, but if students haven't written out questions in advance they're more likely to respond to what the resource persons are actually saying, not what they expect them to say.

After the presentation, of course, teachers will want to discuss with students what the resource person said, explore how it fits or doesn't fit with what they studied before, and try to use it as a link to further lessons. One last step that our teachers suggest is to not only send a letter of thanks to the resource person, but to send a letter of appreciation to his supervisor. These letters are put in resource persons' files and are much appreciated by them.

Seeing the System in Action

Field trips are of course an instructional activity, and so we might more appropriately discuss them in another article in this series, but we consider them here because the teachers told us over and over that these trips were a tremendous help for them, especially in the early days of teaching about law. The trips taught teachers about legal processes, helped them see what interested students, and helped them find lawyers, judges, and other resources for their program. In fact, the teachers we talked to were more enthusiastic about field trips than any other aspect of law-related education. As John McKinnon says, "I've never had a bad experience on a field trip. Every time on the bus back I get at least 60 to 80 questions from students who want to know more about what they've just seen."

If the rewards are great, however, the pitfalls are too. There are administrative headaches to worry about, accidents to fear, and the ever-present need to plan carefully and well in advance. Nonetheless, all the teachers we talked to told us it was worth it and that they wanted to do more of it.

Finding out about where to visit is much like finding community resource persons. Call bar associations, courts, police departments, and anybody else you can think of. If you've gotten in touch with community people already, ask them to recommend sites that you and your class might visit.

The three best sites seem to be police departments, courts, and prisons. Police departments often have programs for conducting school tours, involving visits to crime labs, training facilities, and other departments that fascinate kids. Ride-along programs that enable students to ride in patrol cars for a tour of duty are the best activity, but they're harder to arrange. Janice Berman had to work some time to convince her suburban police department that the idea could work, and then had to convince them that girls as well as boys should be able to ride-along. Both obstacles were overcome, however, and the program now goes forward every year with automatic approval.

Court tours are probably the most common form of field activity. In any metropolitan area, there will probably be a wide variety of courts to choose from—local, state, and federal courts, as well as courts of original jurisdiction and appeals courts. Most of the teachers we talked to tried to take their students to more than one courthouse in a semester.

John McKinnon has been taking his students on tours for ten years, and by now has built up such a good rapport with court administrators and judges that he and his class are usually directed to the more interesting trials. He recommends going to court on Wednesdays or Thursdays, since Mondays and Tuesdays are generally given over to jury selection and are much less interesting than cases in progress. He thinks that jury trials may be best for students, since they give students the opportunity to hear opening and closing statements.

When he takes a class through a courthouse, they generally attend a trial in the morning together, but in the afternoon split up into groups of a half dozen or so. He has a list of the cases that are going on in the various courtrooms, and students can choose to visit the kinds of cases they think will interest them the most. He says that students can get a great deal out of even an hour or two of sitting in on a case.

Charlie Hart follows the same basic procedure, giving his students about a half a day on their own in the courthouse. He tells them not to expect the kind of courtroom drama they are accustomed to from TV and the movies, but he's found that the one place where they can usually find drama, where the "tension is so thick that you can cut it," is in divorce court. There, the issues are easy to grasp and it is possible to know what's happening in only a few minutes, so divorce cases represent a particularly good learning experience for students.

Community resource people are a key to court visits. Lawyers can help set up such visits and can conduct the students through the courts, explaining procedures and various functions. Judges are often helpful, talking to students in

KA-POW!
FUNKY WINKERBEAN
THE COACH'S BEEN STRUCK BY LIGHTNING! GO GET SOME HELP!
BATIUK
RIGHT! I THINK THERE'S A LAWYER IN THE NEXT FOURSOME!

their chambers about what they have just seen. Sometimes, judges work out impromptu role-plays with them, as when one judge explained a case that he had recently handled and asked students what they would have done in his position. And of course court tours may give students a chance to meet and talk with prosecutors, public defenders, defense attorneys, and lots of other actors in the system.

State and local correctional institutions are another favorite site for classroom visits. Prisons are much grimmer and starker than police departments and courts, and teachers find them useful for precisely that reason. They discourage would-be law-breakers, and at the same time raise a raft of questions about the purpose of prisons and how well they are functioning. And sometimes they have an even more direct application to the schools. Charles Kuner took his students to a state boy's training center which operates on the principle of positive peer pressure. The students were so impressed by this approach that they wanted to explore something like it for their own school, and the result is a peer counseling program at the high school now.

Of course, taking students through a prison isn't the most relaxing experience. John McKinnon reports being driven nearly to ulcers by the thought of taking 120 students each semester through one or another correctional institution. He never had a problem in ten years, but took last year off to give his nerves a rest.

There are some other good locations too. In many cities there are regional offices of the Federal Bureau of Investigation and the Secret Service of the U.S. Treasury Department. In Chicago, these regional offices are in the same building and conduct tours for students. The teachers report that these tours are well conceived and educationally very rewarding.

Another resource that may well exist in your community is a public law library. In Chicago, the Cook County Law Library is open to the general public for several hours each afternoon, and John Gilbert of Chicago's Hubbard High School has found that it is a good resource for his students. They go there each day for two or three weeks to research an issue, finding pertinent cases and seeing the evolution of the law through various holdings and rationales. Their teacher accompanies them on the first visit to orient them to the library and its services, but after that they are on their own to research the project they have chosen. In addition to building their research skills, the experience gives students an atmosphere they like, a feeling that they're not doing school work but the kind of work that lawyers themselves do.

Here are some tips our teachers had on field trips:

1. Find out in advance how many students the facility will accommodate; nothing ruins a tour more than too many people and too little space.

2. Make reservations early. This wasn't a problem in the Chicago area five or six years ago, but now courts, police departments, and prisons often have long waiting lists for tours. Start looking for dates at the very beginning of the school year, or before.

3. Give yourself plenty of time to handle any red tape involved in tours. Get the forms early and get them returned early. If students are required to get their parents' permission and the permission of other teachers before they can take the trip, give them the appropriate forms early and tell them that it's up to them to get the forms filled out or they won't go.

4. Make sure you explain to other teachers that field trips are an integral part of your course. Try not to pull your students out of someone else's course repeatedly, and reciprocate graciously when someone else wants to take students on a trip that will require them missing your course.

The teachers unanimously agreed that there are lots of resources for teaching about the law and legal system—books, films, games, people, and places. They caution, though, that no one is going to present these resources to you on a silver platter. You'll have to search them out, and what you make of them will largely depend on the energy, enthusiasm, and skill you bring to the subject. However, our teachers say that the rewards—lively classes and an educational program that students are really interested in—make it all worthwhile. □

"A STROKE OF LUCK, MARQUIST! YOU'VE BEEN FOUND MENTALLY INCOMPETENT TO STAND TRIAL."

New York Project Offers Help Across State

Four years ago, there was a great deal of interest in law-related education in New York State, but efforts there were fragmentary and tentative. Then, in the summer of 1974, the New York State Bar Association and the New York State Education Department joined forces on an ambitious statewide program that has put on teacher training institutes and workshops across the state, provided consulting help to programs of all kinds, funded four major regional projects and more than a dozen innovative local programs, and made more than 25 small grants to support a wide variety of specific law-related activities such as curriculum development.

The state bar and state department have worked together on all aspects of the project. For example, they've shared responsibility for the materials which the project has made available.

The state department in 1971 put together two curriculum guides, *Teaching About Basic Legal Concepts in the Junior High School* and *Teaching About Basic Legal Concepts in the Senior High School.* These guides contain extensive outlines and detailed teaching strategies to assist teachers in planning law-related lessons. They're available from the New York State Education Department, Bureau of Secondary Curriculum Development (attention: Publications Distribution Unit, Finance Section), Albany 12234. The junior high guide is $1.00; the senior high guide is $2.00.

Through the New York State Bar Association, residents of New York State can get several different types of materials. The *Mock Trial Manual* for secondary school teachers and students details case studies and involves students in actual trial situations (single copies free to New York residents on request to Public Relations Office, New York State Bar Association, One Elk Street, Albany 12207). The state bar also offers *Law and the Courts,* a layman's handbook on court procedures (single copies 50c), and *The Family Lawyer* column. New York residents may order as many copies of this column as needed for class distribution; they're mailed out monthly during the school year.

Another resource is a statewide *Journal* of law-related education activities dealing with both substantive law and practical teaching approaches and strategies. It is available from the state bar, at no cost to residents of the state.

The statewide project offers a wide variety of consulting services, ranging from help in curriculum development to assistance in putting together a team of community people who can support a law program in the schools. The state bar's contribution is a lawyer-in-the-classroom program and an effort to work with local bar associations around the state to marshal resources in support of local programs.

The state education department and state bar have also shared funding responsibility. The state department, through the Title IV-C program, has funded three of the four major regional projects that offer teacher training, help in curriculum development, and a variety of other assistance. These projects generally provide teacher training in the summer and follow-up workshops during the school year.

The regional centers are located in or near major cities in several parts of the state. In the *Buffalo* area, contact, Anton C. Schwarzmueller, 291 Windermere Blvd., Amherst 14226, 716-836-3000. In the *Rochester* area, contact Peter W. Knapp, R. L. Thomas High School, 800 Five Mile Line Road, Webster 14580, 716-671-1990. In the *Syracuse* area, contact James J. Carroll, Westhill Central School District, 4501 Onondaga Blvd., Syracuse 13219, 315-475-1621. And in *New York City,* contact Frances Low, Director, Open Doors, 20 West 40th Street, New York 10019, 212-391-1960.

In addition to these regional projects, in 1976 the state education department funded 13 programs around the state through Title IV-C of the Elementary and Secondary Education Act. Each has somewhat different goals and activities, but all concentrate on strengthening the law-related and civic education portions of the curriculum and developing materials and techniques to increase students' participation and skills. These programs may well provide a useful resource. For more information about them, please contact Donald Bragaw at the address given below.

The state bar has helped in funding by making bloc grants in support of teacher training, publications, conferences, mock trials, and other law-related education activities. These small grants (last year the range was from $200 to $3500) are for one year only and support a specific activity, but project officials think that they have been very successful in stimulating interest in the field and providing teachers and lawyers with a resource for getting something started or for improving an existing program. If the program continues this year, applications will probably be accepted in November and December for an award by February 1. Twenty-seven out of 65 applications were funded last year, so your chances of getting a bloc grant are pretty good.

For information about the bloc grant program and the Title IV-C programs in your area, or for information about how the statewide project may be able to provide assistance, please contact either Donald Bragaw, Bureau of Social Studies, New York State Education Department, Albany 12234, 518-474-5978 or Dan Goldstein, New York State Bar Association, One Elk Street, Albany 12207, 518-445-1250. --CW

opinions
CONCURRING & DISSENTING

The more than 300 opinion cards that readers sent us from the first issue of *Update* constituted the bulk of our correspondence.

As indicated in the *Opening Statement*, these responses helped us tailor *Update* more to your needs and interests. We take this opportunity to thank those who responded for their many thoughtful ideas and comments.

We've summarized the responses on a facsimile of the card which appears below. The grades in the first response represent the grade point average for each article.

1. Please grade us from A to F on each of the following sections:
   - A- "The Court Grapples with Equal Protection"
   - B+ "From Pregnancy Benefits to Undercover Agents"
   - B+ "Being Ripped Off? Call a Kid"
   - B+ "Newsclips"
   - B+ "A Plea for Equality"
   - B "Cases on . . . Animals and Accidents"
   - B- "Oregon Project Thrives on Hard Money"
   - B "Focus on Audio-Visual Materials"
   - B "Federal Funds Available"
   - B "New Statewide Programs"
   - B+ "Summer Programs for Teachers"
2. Would the Supreme Court Report ("The Court Grapples with Equal Protection") have been more useful to you if it had contained more information on legal substance and procedure(64) or if it had focused more on the broad social implications of the decisions(117)? (35 readers wanted us to retain the same balance.)
3. Would you like more articles about what teachers are doing in the classroom?
   195 yes 35 no
4. Which topics would you like to see us emphasize in future issues?
   - 80 criminal law
   - 142 juvenile law
   - 144 student and teacher rights and responsibilities
   - 122 consumer law
   - 197 practical law/skills that students should know
   - 82 freedom of expression
   - 74 right to privacy
5. What sections should we add to *Update*?
   - 195 classroom strategies
   - 60 researching the law
   - 78 program ideas
   - 134 opposing views on critical issues
   - 37 in-depth book reviews
   - 74 evaluating law-related programs
   - 75 rationales for teaching about law

Over 150 of our readers used the 'additional comments' section of the card to give us more detailed reactions to the issue. These comments were generally very helpful. Here's a sampling:

Standing alone in the Rip Van Winkle department is "Useless magazine, for which I have no need or desire to ever view again. I teach *basic history* not artsy-craftsy rubbish such as this."

In the constructive criticism category:

"Define your focus more sharply. I assume you write for teachers/educators K-12, but the mixture is a potpourri."

"Drop the legalistic citations."

"Write descriptions of cases more interestingly."

And finally, in the "Aw, mom, you're embarrassing me" category:

"A fine magazine that fills several voids in the legal knowledge of high school teachers."

"It was very informative and helpful. Please continue to write in terms that a layman can understand. It answered many questions my eighth grade civics and law classes have asked me."

"Excellent materials for the classroom teacher. Thank you!"

"A good idea finally brought to fruition. Should be helpful in making the Constitution come alive."

"I think that this is a good introduction to the field for student teachers—it covers a very wide range without being ponderous."

"Most teachers have a lack of legal expertise, and an analysis such as 'The Court Grapples with Equal Protection' is of utmost assistance."

"Leave it alone!!! It is a good magazine, well balanced between knowledge of the law and teaching ideas."

"You have presented a broad format, useful because it is consistently related to law from various perspectives, which enables one to pick and choose those articles most appropriate. It holds both personal and professional value."

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